

*The Code of Civil Procedure, 1908.**(The First Schedule.)**(Order XXI.—Execution of Decrees and Orders.)*

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (2) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

54. (1) Where the property is immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate.

Removal of attachment after satisfaction of decree. 55. Where—

(a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or
 (b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or
 (c) the decree is set aside or reversed, the attachment shall be deemed to be withdrawn, and, in the case of immoveable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

56. Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

57. Where any property has been attached in execution of a decree but by reason of the decree-holder's default the Court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application the attachment shall cease.

Investigation of claims and objections.

58. (1) Where any claim is preferred to, or any investigation of claims to, and objections to attachment of, attached property, liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit;

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection Postponement of sale. applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

59. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

60. Where upon the said investigation the Court is satisfied that for the reason Release of property stated in the claim or objection such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

61. Where the Court is satisfied that the property Disallowance of claim was, at the time it was attached, in the possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

62. Where the Court is satisfied that the property is subject to a mortgage or charge Continuance of attachment in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge.

63. Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

Sale generally.

64. Any Court executing a decree may order that any property attached by Power to order property attached to be sold it and liable to sale, or such and proceeds to be paid to person entitled. portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

65. Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed.

66. (1) Where any property is ordered to be sold by Proclamation of sales public auction in execution of a by public auction. decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

- (a) the property to be sold;
- (b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;
- (c) any incumbrance to which the property is liable;
- (d) the amount for the recovery of which the sale is ordered; and
- (e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so

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far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

67. (1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).

(2) Where the Court so directs, such proclamation shall also be published in the local official Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

68. Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale.

69. (1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than seven days, a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

70. Nothing in rules 66 to 69 shall be deemed to apply to any case in which the execution of a decree has been transferred to the Collector.

71. Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court or to the Collector or subordinate of the Collector, as the case may be, by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

72. (1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

Decree-holder not to bid for or buy property without permission.

(2) Where a decree-holder purchases with such permission, the purchase-money and

Where decree-holder purchases, amount of decree may be taken as may, subject to the provisions of section 73, be set off against one another, and the

Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.

73. No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Sale of moveable property.

74. (1) Where the property to be sold is agricultural produce, the sale shall be held,—

- (a) if such produce is a growing crop, on or near the land on which such crop has grown, or,
- (b) if such produce has been cut or gathered, at or near the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited:

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

- (a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(b) the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market-day,

the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

75. (1) Where the property to be sold is a growing

Special provisions relating to growing crops. crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

76. Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

77. (1) Where moveable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.

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(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the moveable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

78. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

79. (1) Where the property sold is moveable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is moveable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

80. (1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(2) Such execution or endorsement may be in the following form, namely:—

A. B. by C. D., Judge of the Court of (or as the case may be), in a suit by E. F. against A. B.

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

81. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

Sale of immoveable property.

82. Sales of immoveable property in execution of decrees may be ordered by What Courts may order any Court other than a Court of Small Causes.

83. (1) Where an order for the sale of immoveable property has been made, if the Postponement of sale to enable judgment-debtor to satisfy the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may, on his application, postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

(2) In such case the Court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein, and notwithstanding anything contained in section 64, to make the proposed mortgage, lease or sale:

Provided that all monies payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set off such money under the provisions of rule 72, into Court:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on, such property.

84. (1) On every sale of immoveable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent. on the amount of his purchase-money to the officer or other person conducting the sale, and, in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree-holder is the purchaser and is entitled to set off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.

85. The full amount of purchase-money payable shall be paid by the purchaser into Time for payment in Court before the Court closes full of purchase-money. on the fifteenth day from the sale of the property:

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

86. In default of payment within the period mentioned Procedure in default of payment. in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

87. Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

88. Where the property sold is a share of undivided immoveable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

89. (1) Where immoveable property has been sold in execution of a decree, any Application to set aside person, either owning such property or holding an interest therein by virtue of a title acquired before such sale,

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may apply to have the sale set aside on his depositing in Court,—

(a) for payment to the purchaser, a sum equal to five per cent. of the purchase-money, and

(b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

(2) Where a person applies under rule 90 to set aside the sale of his immoveable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

90. (1) Where any immoveable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

91. The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.

92. (1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within thirty days from the date of sale, the Court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

93. Where a sale of immoveable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

94. Where a sale of immoveable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

95. Where the immoveable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser, or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

96. Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Resistance to delivery of possession to decree-holder or purchaser.

97. (1) Where the holder of a decree for the possession of immoveable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any

person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

98. Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days.

99. Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the Court shall make an order dismissing the application.

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100. (1) Where any person other than the judgment-debtor is dispossessed of immoveable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

101. Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

102. Nothing in rules 99 and 101 shall apply to resistance or obstruction in execution of a decree for the possession of immoveable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

103. Any party not being a judgment-debtor against whom an order is made under rule 98, rule 99 or rule 101 may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be conclusive.

ORDER XXII.*Death, Marriage and Insolvency of Parties.*

1. The death of a plaintiff or defendant shall not No abatement by cause the suit to abate if the party's death, if right to sue survives.

2. Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

3. (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so

far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

4. (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

5. Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court.

6. Notwithstanding anything contained in the foregoing rules, whether the cause of action No abatement by reason of death after survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

7. (1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may proceed with to judgment, and, where the decree is against a female defendant, it may be executed against her alone.

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

8. (1) The insolvency of a plaintiff in any suit When plaintiff's insolvency bars suit. which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

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(a) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

9. (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the Indian Limitation Act, 1877, shall apply to applications under sub-rule (2).

10. (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

II. In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

11. Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.

ORDER XXIII.*Withdrawal and Adjustment of Suits.*

1. (1) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

(2) Where the Court is satisfied—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(4) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

2. In any fresh suit instituted on permission granted under the last preceding Limitation law not rule, the plaintiff shall be affected by first suit, bound by the law of limitation in the same manner as if the first suit had not been instituted.

3. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit.

4. Nothing in this Order shall apply to any proceedings in execution of a decree or order.

ORDER XXIV.*Payment into Court.*

1. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

2. Notice of the deposit shall be given through Notice of deposit. the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

3. No interest shall be allowed to the plaintiff on Interest on deposit not allowed to plaintiff after notice. any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof.

4. (1) Where the plaintiff accepts such amount as satisfaction in part only of his claim, he may prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

(2) Where the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly; and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Illustrations.

(a) A owes B Rs. 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c) A owes B Rs. 100, and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

*The Code of Civil Procedure, 1908.**(The First Schedule.)**(Order XXV.—Security for Costs. Order XXVI.—Commissions.)***ORDER XXV.***Security for Costs.*

1. (1) Where, at any stage of a suit, it appears to the Court that a sole plaintiff is, or may be required from (when there are more plaintiffs than one) that all the plaintiffs are, residing out of British India, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within British India other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

(2) Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of sub-rule (1).

(3) On the application of any defendant in a suit for the payment of money, in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within British India.

2. (1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

ORDER XXVI.*Commissions.**Commissions to examine witnesses.*

1. Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it.

2. An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

3. A commission for the examination of a person where witness resides within Court's jurisdiction. The Court issuing the same may be issued to any person whom the Court thinks fit to execute.

4. (1) Any Court may in any suit issue a commission for the examination of—

Persons for whose examination commission may issue.

(a) any person resident beyond the local limits of its jurisdiction;

(b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(c) any civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service.

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

5. Where any Court to which application is made for the issue of a commission for Commission or Request to examine witness not residing at any place not within British India, the Court is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

6. Every Court receiving a commission for the examination of any person shall Court to examine witness pursuant to commission.

7. Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit.

8. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless—

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Commissions for local investigations.

9. In any suit in which the Court deems a local Commissions to make investigation to be requisite or local investigations proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the Local Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

10. (1) The Commissioner, after such local inspection as he deems necessary and Procedure of Commissioner after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

*The Code of Civil Procedure, 1908.**(The First Schedule.)**(Order XXVI.—Commissions. Order XXVII.—Suits by or against the Government or Public Officers in their official capacity.)*

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit, may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

Commissions to examine accounts.

11. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

12. (1) The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

(2) The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

Commissions to make partitions.

13. Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

14. (1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

General provisions.

15. Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

16. Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,—

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(b) call for and examine documents and other things relevant to the subject of inquiry;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

17. (1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall

apply to persons required to give evidence or to produce documents under this Order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of British India, and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court.

(2) A Commissioner may apply to any Court (not being a High Court) within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

18. (1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

ORDER XXVII.*Suits by or against the Government or Public Officers in their official capacity.*

1. In any suit by or against the Secretary of State for India in Council, the plaintiff or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

2. Persons being *ex officio* or otherwise authorized to act for the Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government.

3. In suits by or against the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the words "The Secretary of State for India in Council."

4. The Government pleader in any Court, or such other person as the Local Government may for any Court appoint in this behalf, shall be the agent of the Government for the purpose of receiving processes against the Secretary of State for India in Council issued by such Court.

5. The Court, in fixing the day for the Secretary of State for India in Council to answer to the plaint, shall allow appearance on behalf of the Government, a reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the Government pleader to appear and answer on behalf of the said Secretary of State for India in Council or the Government, and may extend the time at its discretion.

The Code of Civil Procedure, 1908.

(The First Schedule)

(Order XXVII.—Suits by or against the Government or Public Officers in their official capacity. Order XXVIII.—Suits by or against Military Men. Order XXIX.—Suits by or against Corporations. Order XXX.—Suits by or against Firms and Persons carrying on business in names other than their own.)

6. The Court may also, in any case in which the Government pleader is not accompanied by any person on the part of the Secretary of State for India in Council, who may be able to answer any material questions relating to the suit, direct

the attendance of such a person.

7. Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to the Government before answering the plaint, he may apply to the Court to grant such extension of time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel.

(2) Upon such application the Court shall extend the time for so long as appears to it to be necessary.

8. (1) Where the Government undertakes the defence of a suit against a public officer, the Government pleader, upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits.

(2) Where no application under sub-rule (1) is made by the Government pleader on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties: Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

ORDER XXVIII.

Suits by or against Military Men.

1. (1) Where any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

(2) The authority shall be in writing and shall be signed by the officer or soldier in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation.—In this Order the expression "commanding officer" means the officer in actual command for the time being of any regiment, corps, detachment or depot to which the officer or soldier belongs.

2. Any person authorized by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

3. Processes served upon any person authorized by an officer or a soldier under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

ORDER XXIX.

Suits by or against Corporations.

1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

2. Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

3. The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

ORDER XXX.

Suits by or against Firms and Persons carrying on business in names other than their own.

1. (1) Any two or more persons claiming or being liable as partners and carrying on business in British India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

2. (1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or Disclosure of partners' their pleader shall, on demand names. in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

Provided that all the proceedings shall nevertheless continue in the name of the firm.

3. Where persons are sued as partners in the name of their firm, the summons shall be served either—

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within British India upon any person having, at the time of service, the control or management of the partnership business there,

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without British India:

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within British India whom it is sought to make liable.

*The Code of Civil Procedure, 1908.**(The First Schedule.)*

(Order XXX.—Suits by or against Firms and Persons carrying on business in names other than their own. Order XXXI.—Suits by or against Trustees, Executors and Administrators. Order XXXII.—Suits by or against Minors and Persons of Unsound Mind.)

IX of 1872.

4. (1) Notwithstanding anything contained in section 45 of the Indian Contract Act, Right of suit on death 1872, where two or more persons of partner, may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have—

- (a) to apply to be made a party to the suit, or
- (b) to enforce any claim against the survivor or survivors.

5. Where a summons is issued to a firm and is served Notice in what capa- in the manner provided by rule 3, every person upon whom it is city served. served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

6. Where persons are sued as partners in the name Appearance of part- of their firm, they shall appear individually in their own names, ners. but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

7. Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

8. Any person served with summons as a partner Appearance under rule 3 may appear under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared.

9. This Order shall apply to suits between a firm and Suits between co-part- one or more of the partners therein and to suits between partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

10. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply.

ORDER XXXI.*Suits by or against Trustees, Executors and Administrators.*

1. In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

2. Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside British India, need not be made parties.

3. Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her.

ORDER XXXII.*Suits by or against Minors and Persons of Unsound Mind.*

1. Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

2. (1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

3. (1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice to the minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

4. (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

The Code of Civil Procedure, 1908.

(The First Schedule.)

(Order XXXII.—Suits by or against Minors and Persons of Unsound Mind.
Order XXXIII.—Suits by Paupers.)

5. (1) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit or on any application, before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

6. (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor either—

(a) by way of compromise before decree or order, or
(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

7. (1) No next friend or guardian for the suit shall, without the leave of the Court, agree or compromise by next friend or guardian for the suit. expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

8. (1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed, and also that he has no interest adverse to that of the minor.

9. (1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

10. (1) On the retirement, removal or death of the next friend of a minor, further proceedings on removal, etc., of new friends shall be stayed until the appointment of a next friend in his place.

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

11. (1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground of guardian for the suit is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

12. (1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read thenceforth thus:—

“A. B., late a minor, by C. D., his next friend, but now having attained majority.”

(4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(5) Any application under this rule may be made *ex parte*: but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

13. (1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

(2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.

(3) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

14. (1) A minor on attaining majority may, if a sole unreasonable or impro- plaintiff, apply that a suit instituted in his name by a next friend be dismissed on the ground that it was unreasonable or improper.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

15. The provisions contained in rules 1 to 14, so far as they are applicable, shall extend to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.

16. Nothing in this Order shall apply to a Sovereign Prince or Ruling Chief suing or Saving for Princes and being sued in the name of his Chief. State, or being sued by direction of the Governor General in Council or a Local Government in the name of an agent or in any other name, or shall be construed to affect or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

ORDER XXXIII.

Suits by Paupers.

Suits may be instituted *In forma pauperis*. 1. Subject to the following provisions, any suit may be instituted by a pauper.

*The Code of Civil Procedure, 1908.**(The First Schedule.)**(Order XXXIII.—Suits by Paupers. Order XXXIV.—Suits relating to Mortgages of Immoveable Property.)*

Explanation.—A person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaintiff in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing-apparel and the subject-matter of the suit.

2. Every application for permission to sue as a pauper

Contents of application. shall contain the particulars required in regard to plaintiffs in suits: a schedule of any moveable or immoveable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

3. Notwithstanding anything contained in these rules,

Presentation of application. the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

4. (1) Where the application is in proper form and

Examination of applicant. duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

(a) Where the application is presented by an agent,

If presented by agent. Court may order applicant to be examined by commission.

5. The Court shall

Rejection of application. reject an application for permission to sue as a pauper—

(a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or**(b) where the applicant is not a pauper, or****(c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or****(d) where his allegations do not show a cause of action, or****(e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.****6. Where the Court sees no reason to reject the application on any of the grounds**

Notice of day for receiving evidence of applicant's pauperism. stated in rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

7. (1) On the day so fixed or as soon thereafter

Procedure at hearing. as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

8. Where the application is granted. It shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary

manner, except that the plaintiff shall not be liable to pay any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

9. The Court may, on the application of the defendant, or of the Government pleader, of which seven days' clear notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

(a) if he is guilty of vexatious or improper conduct in the course of the suit;

(b) if it appears that his means are such that he ought not to continue to sue as a pauper; or

(c) if he has entered into any agreement with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

10. Where the plaintiff succeeds in the suit, the Costs where pauper Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; such amount shall be recoverable by the Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

11. Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed,—

(a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, or

(b) because the plaintiff does not appear when the suit is called on for hearing,

the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

12. The Government shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 10 or rule 11.

13. All matters arising between the Government and Government to be deemed a party. any party to the suit under rule 10, rule 11 or rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47.

14. Where an order is made under rule 10, rule 11 or rule 12, the Court shall forthwith cause a copy of the decree to be forwarded to the Collector.

15. An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by the Government and by the opposite party in opposing his application for leave to sue as a pauper.

16. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism shall be costs in the suit.

ORDER XXXIV.*Suits relating to Mortgages of Immoveable Property.*

1. Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.

*The Code of Civil Procedure, 1908.**(The First Schedule.)**(Order XXXIV. — Suits relating to Mortgages of Immoveable Property.)*

Explanation.—A puise mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

2. In a suit for foreclosure, if the plaintiff succeeds, Preliminary decree in the Court shall pass a decree—

(a) ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage, and for his costs of the suit (if any) awarded to him on the day next herein-after referred to, or

(b) declaring the amount so due at the date of such decree,

and directing—

(c) that if the defendant pays into Court the amount so due on a day within six months from the date of declaring in Court the amount so due to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property, but

(d) that, if such payment is not made on or before the day to be fixed by the Court, the defendant shall be debarred from all right to redeem the property.

3. (1) Where, on or before the day fixed, the defendant Final decree in fore- pays into Court the amount closure-suit. declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree—

(a) ordering the plaintiff to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up,

and, if so required, (b) ordering him to retransfer the mortgaged property as directed in the said decree,

and, also, if necessary, (c) ordering him to put the defendant in possession of the property.

(2) Where such payment is not so made, the Court shall, on application made in that behalf by the plaintiff, pass a decree that the defendant and all persons claiming through or under him be debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property:

Provided that the Court may, upon good cause shown Power to enlarge time. and upon such terms (if any) as it thinks fit, from time to time postpone the day fixed for such payment.

(3) On the passing of a decree under sub-rule (2) the Discharge of debt. debt secured by the mortgage shall be deemed to be discharged.

4. (1) In a suit for sale, if the plaintiff succeeds, the Preliminary decree in re- Court shall pass a decree to the effect mentioned in clauses (a), (b) and (c) of rule 2 and also

directing that, in default of the defendant paying as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is declared due to the plaintiff as aforesaid, together with subsequent interest and subsequent costs, and that the balance (if any) be paid to the defendant or other persons entitled to receive the same.

(2) In a suit for foreclosure, if the plaintiff succeeds Power to decree sale. and the mortgage is not a mortgage by conditional sale, the Court may, at the instance of the plaintiff or of any person interested either in the mortgage-money or in the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit including the deposit in Court of a reasonable sum fixed by the Court, to meet the expenses of sale and to secure the performance of the terms.

5. (1) Where on or before the day fixed the defendant Final decree in suit for pays into Court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree—

(a) ordering the plaintiff to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up,

and, if so required, (b) ordering him to retransfer the mortgaged property as directed in the said decree,

and also, if necessary, (c) ordering him to put the defendant in possession of the property.

(2) Where such payment is not so made, the Court shall, on application made in that behalf by the plaintiff, pass a decree that the mortgaged property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in rule 4.

6. Where the net proceeds of any such sale are found Recovery of balance to be insufficient to pay the amount due on mortgage. the balance is legally recoverable from the defendant otherwise than out of the property sold, the Court may pass a decree for such amount.

7. In a suit for redemption, if Preliminary decree in the plaintiff succeeds, the Court redemption-suit. shall pass a decree—

(a) ordering that an account be taken of what will be due to the defendant for principal and interest on the mortgage, and for his costs of the suit (if any) awarded to him on the day next herein-after referred to, or

(b) declaring the amount so due at the date of such decree,

and directing— (c) that, if the plaintiff pays into Court the amount so due on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, where the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff in possession of the property, but

(d) that, if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage is simple or usfructuary) be debarred from all right to redeem or (unless the mortgage is by conditional sale) that the mortgaged property be sold.

8. (1) Where, on or before the day fixed, the plaintiff Final decree in re- pays into Court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree—

(a) ordering the defendant to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up,

and, if so required, (b) ordering him to retransfer the mortgaged property as directed in the said decree,

and also, if necessary, (c) ordering him to put the plaintiff in possession of the property.

(2) Where such payment is not so made, and the mortgage is not simple or usfructuary, the Court shall, on application made in that behalf by the defendant, pass a decree that the plaintiff and all persons claiming through or under him be debarred from all right to redeem the mortgaged property and also, if necessary, ordering the plaintiff to put the defendant in possession of the property.

(3) On the passing of a decree under sub-rule (2) the debt secured by the mortgage shall be deemed to be discharged.

*The Code of Civil Procedure, 1908.**(The First Schedule.)**(Order XXXIV.—Suits relating to Mortgages of Immoveable Property. Order XXXV.—Interpleader.)*

(4) Where such payment is not so made, and the mortgage is not by conditional sale, the Court shall, on application made in that behalf by the defendant, pass a decree that the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and that the balance (if any) be paid to the plaintiff or other persons entitled to receive the same:

Provided that the Court may, upon good cause shown Power to enlarge time, and upon such terms (if any) as it thinks fit, from time to time postpone the day fixed for payment.

(5) Notwithstanding anything hereinbefore contained, Decree where nothing is found due or where account referred to in rule 7, mortgagee has been overpaid. that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant, if so required, to re-transfer the property and to pay to the plaintiff the amount which may be found due to him; and the plaintiff shall, if necessary, be put in possession of the mortgaged property.

(6) In finally adjusting the amount to be paid to a Costs of mortgages mortgagee in case of a fore-subsequent to decree. closure or sale or redemption, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure or sale or redemption up to the time of actual payment.

(7) Where property is mortgaged for successive Right of mesne mort- debts to successive mortgagees, gagee to redeem and any mesne mortgagee may institute a suit to redeem the interests of the prior mortgagees and to foreclose the rights of those that are posterior to himself and of the mortgagor.

(8) Where any property the sale of which is directed Sale of property sub- under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

(9) Such proceeds shall be brought into Court and Application of pro- applied as follows:—

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale; secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs, properly incurred in connection therewith;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, in payment of the principal money due on account of that mortgage; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

(10) Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882.

(11) Where a mortgagee has obtained a decree Suit for sale necessary for bringing mortgaged property to sale, for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2.

(12) Nothing in sub-rule (1) shall apply to any territories to which the Transfer of Property Act, 1882, has not been extended.

(13) All the provisions contained in this Order as to Charges. the sale or redemption of mortgaged property shall, so far as may be, apply to property subject to a charge within the meaning of section 100 of the Transfer of Property Act, 1882.

ORDER XXXV.*Interpleader.*

1. In every suit of interpleader the plaintiff shall, in Plaintiff in interpleader addition to the other statements necessary for plaints, state—

- (a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs;
- (b) the claims made by the defendants severally; and
- (c) that, there is no collusion between the plaintiff and any of the defendants.

2. Where the thing claimed is capable of being paid Payment of thing into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

3. Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

4. (1) At the first hearing the Court may—

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or

(b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(2) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct—

(a) that an issue or issues between the parties be framed and tried, and

(b) that any claimant be made a plaintiff in lieu of, or in addition to the original plaintiff, and shall proceed to try the suit in the ordinary manner.

5. Nothing in this Order shall be deemed to enable Agents and tenants may not institute interpleader-suits. agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

Illustrations.

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

6. Where the suit is properly instituted the Court may provide for the costs of charge for plaintiff's the original plaintiff by giving costs. him a charge on the thing claimed or in some other effectual way.

*The Code of Civil Procedure, 1908.**(The First Schedule.)*

(Order XXXVI.—Special Case. Order XXXVII.—Summary Procedure on Negotiable Instruments. Order XXXVIII.—Arrest and Attachment before Judgment.)

ORDER XXXVI.*Special Case.*

1. (1) Parties claiming to be interested in the decision of any question of fact or Power to state case for Court's opinion. law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,—

- (a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or
- (b) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or
- (c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

2. Where the agreement is for the delivery of any property, or for the doing, or Where value of subject- matter must be stated. the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

3. (1) The agreement, if framed in accordance with the rules hereinbefore contained, Agreement to be filed and registered as suit. may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

(2) The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

4. Where the agreement has been filed, the parties Parties to be subject to Court's jurisdiction. to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

5. (1) The case shall be set down for hearing as Hearing and disposal of case. a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suit so far as the same are applicable.

(2) Where the Court is satisfied, after examination of the parties, or after taking such evidence as it thinks fit,—

- (a) that the agreement was duly executed by them,
- (b) that they have a *bond fide* interest in the question stated therein, and

(c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

ORDER XXXVII.*Summary Procedure on Negotiable Instruments.*

Application of Order. 1. This Order shall apply only to—

- (a) the High Courts of Judicature at Fort William, Madras and Bombay;
- (b) the Chief Court of Lower Burma;
- (c) the Court of the Judicial Commissioner of Sind; and
- (d) any other Court to which sections 532 to 537 of the Code of Civil Procedure, 1882, have been already applied.

2. (1) All suits upon bills of exchange, hundis or promissory notes may, in case of the plaintiff desires to proceed suits upon bills of exchange, etc. hereunder, be instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No. 4 in Appendix B or in such other form as may be from time to time prescribed.

(2) In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend; and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and such sum for costs as may be prescribed, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be executed forthwith.

3. (1) The Court shall, upon application by the defendant, showing defence on merits to have leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

4. After decree the Court may, under special circumstances, set aside the decree, and Power to set aside decree. if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

5. In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be deposited with an officer of Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

6. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

7. Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

ORDER XXXVIII.*Arrest and Attachment before Judgment.**Arrest before judgment.*

1. Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,—

- (a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the

*The Code of Civil Procedure, 1908.**(The First Schedule.)**(Order XXXVIII.—Arrest and Attachment before Judgment.)*

Court or to obstruct or delay the execution of any decree that may be passed against him,—

- (i) has absconded or left the local limits of the jurisdiction of the Court, or
- (ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or
- (iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or

(b) that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

3. (1) Where the defendant fails to show such cause the Court shall order him either to

deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

4. (1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

4. Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied:

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees:

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

Attachment before Judgment.

5. (1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

- (a) is about to dispose of the whole or any part of his property, or
- (b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

6. (1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the

Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

7. Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

8. Where any claim is preferred to property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for the payment of money.

9. Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

10. Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

11. Where property is under attachment by virtue of the provisions of this Order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property.

The Code of Civil Procedure, 1908.

(The First Schedule.)

(Order XXXVIII.—Arrest and Attachment before Judgment. Order XXXIX.—Temporary Injunctions and Interlocutory Orders. Order XL.—Appointment of Receivers.)

12. Nothing in this Order shall be deemed to authorize the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

ORDER XXXIX.

Temporary Injunctions and Interlocutory Orders.

Temporary Injunctions.

1. Where in any suit it is proved by affidavit or Cases in which temporary injunction may be granted.

- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

2. (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the

Injunction to restrain repetition or continuance of breach. plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

(3) In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(4) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

3. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

4. Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.

5. An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

Injunction to corporation binding on its officers.

Interlocutory Orders.

6. The Court may, on the application of any party to a suit, order the sale, Power to order interim sale. by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

7. (1) The Court may, on Detention, preservation, inspection, etc., of subject-matter of suit. the application of any party to a suit, and on such terms as it thinks fit,—

- (a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;
- (b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and
- (c) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this rule.

8. (1) An application by the plaintiff for an order under rule 6 or rule 7 may be made after notice to the defendant at any time after institution of the suit.

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance.

9. Where land paying revenue to Government, or a

tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the

proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

10. Where the subject-matter of a suit is money or some other thing capable of

Deposit of money, etc., delivery and any party thereto admits that he holds such money

or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

ORDER XL.

Appointment of Receivers.

1. (1) Where it appears to the Court to be just and convenient, the Court may by Appointment of receivers.—

- (a) appoint a receiver of any property, whether before or after decree;
- (b) remove any person from the possession or custody of the property;
- (c) commit the same to the possession, custody or management of the receiver; and
- (d) confer upon the receiver all such powers as to bringing and defending suits and for the

The Code of Civil Procedure 1908.

(The First Schedule.)

(Order XL.—Appointment of Receivers. Order XLI.—Appeals from Original Decrees.)

realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

3. The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.

Duties. 3. Every receiver so appointed shall—

- (a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;
- (b) submit his accounts at such periods and in such form as the Court directs;
- (c) pay the amount due from him as the Court directs; and
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Enforcement of receiver's duties.

4. Where a receiver—

- (a) fails to submit his accounts at such periods and in such form as the Court directs, or
- (b) fails to pay the amount due from him as the Court directs, or
- (c) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

5. Where the property is land paying revenue to the Government, or land of which When Collector may be appointed receiver. the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.

ORDER XLI.

Appeals from Original Decrees.

1. (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and to accompany memorandum presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

2. The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected

thereby has had a sufficient opportunity of contesting the case on that ground.

3. (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

4. Where there are more plaintiffs or more defendants One of several plaintiffs than one in a suit, and the or defendants may obtain decree appealed from proceeds reversal of whole decree on any ground common to all where it proceeds on the plaintiffs or to all the ground common to all. defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

Stay of proceedings and of execution.

5. (1) An appeal shall not operate as a stay of proceedings under a decree or order Stay by Appellate Court appealed from except so far as the Appellate Court may order,

nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

(2) Where an application is made for stay of execution of an appealable decree Stay by Court which before the expiration of the time passed the decree. allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) that the application has been made without unreasonable delay; and
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Notwithstanding anything contained in sub-rule (3), the Court may make an *ex parte* order for stay of execution pending the hearing of the application.

6. (1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

7. No such security as is mentioned in rules 5 and 6 shall be required from the Secretary of State for India in certain cases. required from the Government or a public Council or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

8. The powers conferred by rules 5 and 6 shall be exercisable where an appeal may be made in appeal from order made in execution of decree.

The Code of Civil Procedure 1908.
(The First Schedule.)
(Order XLI.—Appeals from Original Decrees.)

Procedure on admission of appeal.

9. (1) Where a memorandum of appeal is admitted, the Appellate Court or the pro-
 Registry of memo-
 tandum of appeal.
 per officer of that Court shall
 endorse thereon the date of
 presentation, and shall register the appeal in a book to
 be kept for the purpose.

(2) Such book shall be called the Register of Appeals.

10. (1) The Appellate Court may in its discretion, require appellant to furnish security for costs. Appellate Court may either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both :

Provided that the Court shall demand such security in all cases in which the appellant sides out of British India, and is not possessed of any sufficient immoveable property within British India other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

11. (1) The Appellate Court, after sending for the appeal without sending record if it thinks fit so to do, and notice to Lower Court, hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

12. (1) Unless the Appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal.

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

13. (1) Where the appeal is not dismissed under rule 11, the Appellate Court shall give notice to Court whose decree appealed from.

(2) Where the appeal is from the decree of a Court, the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

(3) Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of, and given to, the applicant.

14. (1) Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on

his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

(2) Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause notice to be served on the respondent or his pleader under the provisions above referred to.

15. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

Procedure on hearing.

16. (1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

17. (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(2) Where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*.

18. Where on the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the cost of serving the notice, the Court may make an order that the appeal be dismissed.

Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing.

19. Where an appeal is dismissed under rule 11, or rule 17 or rule 18, the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

20. Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not made respondents, been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

21. Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

22. (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take

*The Code of Civil Procedure 1908.**(The First Schedule.)**(Order XLI.—Appeals from Original Decrees.)*

any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

(a) Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(b) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(c) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(d) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule.

23. Where the Court from whose decree an appeal is preferred has disposed of the case upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

24. Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

25. Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court appealed from, essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required;

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor.

26. (1) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.

(2) After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

27. (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

28. Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

29. Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Judgment in appeal.

30. The Appellate Court, after hearing the parties or their pleaders and referring where pronounced to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their pleaders.

31. The judgment of the Appellate Court shall be in writing and shall state—

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

32. The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

33. The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

Illustration.

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.

*The Code of Civil Procedure, 1908:**(The First Schedule.)*

(Order XLI.—Appeals from Original Decrees. Order XLII.—Appeals from Appellate Decrees. Order XLIII.—Appeals from Orders. Order XLIV.—Pauper Appeals. Order XLV.—Appeals to the King in Council.)

34. Where the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

Decree in appeal.

35. (1) The decree of the Appellate Court shall bear date the day on which the decree was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it:

Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

36. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

37. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

ORDER XLII.*Appeals from Appellate Decrees.*

1. The rules of Order XLI shall apply, so far as may be, to appeals from appellate Procedure decrees.

ORDER XLIII.*Appeals from Orders.*

1. An appeal shall lie from the following orders under the provisions of section Appeals from orders. 104, namely:—

- (a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court;
- (b) an order under rule 10 of Order VIII pronouncing judgment against a party;
- (c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte*;
- (e) an order under rule 4 of Order X pronouncing judgment against a party;
- (f) an order under rule 21 of Order XI;
- (g) an order under rule 10 of Order XVI for the attachment of property;
- (h) an order under rule 20 of Order XVI pronouncing judgment against a party;
- (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;
- (j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;
- (k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;

- (l) an order under rule 10 of Order XXII giving or refusing to give leave;
- (m) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction;
- (n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (o) an order under rule 3 or rule 8 of Order XXXIV refusing to extend the time for the payment of mortgage-money;
- (p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV;
- (q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII;
- (r) an order under rule 1, rule 2, rule 4 or rule 10 of Order XXXIX;
- (s) an order under rule 1 or rule 4 of Order XL;
- (t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;
- (u) an order under rule 23 of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;
- (v) an order made by any Court other than a High Court refusing the grant of a certificate under rule 6 of Order XLV;
- (w) an order under rule 4 of Order XLVII granting an application for review.

2. The rules of Order XLI shall apply, so far as may be, to appeals from orders.

*Procedure.***ORDER XLIV.***Pauper Appeals.*

1. Any person entitled to prefer an appeal, who is unable to pay the fee required Who may appeal as for the memorandum of appeal, pauper, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject, in all matters including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable:

Provided that the Court shall reject the application unless, upon a perusal thereof

Procedure on application and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

2. The inquiry into the pauperism of the applicant

Inquiry into pauperism. may be made either by the Appellate Court or under the orders of the Appellate Court by the Court from whose decision the appeal is preferred:

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees cause to direct such inquiry.

ORDER XLV.*Appeals to the King in Council.*

1. In this Order, unless there is something repugnant "Decree" defined. in the subject or context, the expression "decree" shall include a final order.

2. Whoever desires to appeal to His Majesty in Application to Court Council shall apply by petition to the Court whose decree is complained of.

3. (1) Every petition shall state the grounds of appeal and pray for a certificate either that, as regards amount or value and nature, the case fulfills the requirements of section 110, or that it is otherwise a fit one for appeal to His Majesty in Council.

(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

*The Code of Civil Procedure, 1908.**(The First Schedule.)**(Order XLV.—Appeals to the King in Council.)*

4. For the purposes of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated: but suits decided by separate judgments shall not be consolidated, notwithstanding that they involve substantially the same questions for determination.

5. In the event of any dispute arising between the parties as to the amount or value of the subject-matter of the suit in the Court of first instance, or as to the amount or value of the subject-matter in dispute on appeal to His Majesty in Council, the Court to which a petition for a certificate is made under rule 2 may, if it thinks fit, refer such dispute for report to the Court of first instance, which last-mentioned Court shall proceed to determine such amount or value and shall return its report together with the evidence to the Court by which the reference was made.

Effect of refusal of certificate. 6. Where such certificate is refused, the petition shall be dismissed.

7. (1) Where the certificate is granted, the applicant shall, within six months from the date of the decree complained of, or within six weeks from the date of the grant of the certificate, whichever is the later date,—

- (a) furnish security for the costs of the respondent, and
- (b) deposit the amount required to defray the expense of translating, transcribing, indexing and transmitting to His Majesty in Council a correct copy of the whole record of the suit, except—

 - (i) formal documents directed to be excluded by any order of His Majesty in Council in force for the time being;
 - (ii) papers which the parties agree to exclude;
 - (iii) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included; and
 - (iv) such other documents as the High Court may direct to be excluded.

(2) Where the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also, within the time mentioned in sub-rule (1), deposit the amount required to defray the expense of printing such copy.

8. Where such security has been furnished and Admissio of appeal deposit made to the satisfaction and procedure thereon. of the Court, the Court shall—

- (a) declare the appeal admitted,
- (b) give notice thereof to the respondent,
- (c) transmit to His Majesty in Council under the seal of the Court a correct copy of the said record, except as aforesaid, and
- (d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

9. At any time before the admission of the appeal, Revocation of accept- the Court may, upon cause shown, revoke the acceptance of an ce of security. any such security, and make further directions thereon.

10. Where at any time after the admission of an appeal but before the transmission of the copy of the record, except security or payment. as aforesaid, to His Majesty in Council, such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

11. Where the appellant fails to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of His Majesty in Council, and in the meantime execution of the decree appealed from shall not be stayed.

12. When the copy of the record, except as aforesaid, has been transmitted to His Majesty in Council, the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7.

13. (1) Notwithstanding the grant of a certificate for Powers of Court pend- the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court,—

- (a) impound any moveable property in dispute or any part thereof, or
- (b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which His Majesty in Council may make on the appeal, or
- (c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any order which His Majesty in Council may make on the appeal, or
- (d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

14. (1) Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

(2) In default of such further security being furnished as required by the Court,—

- (a) if the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree appealed from as if the appellant had furnished no such security;
- (b) if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

15. (1) Whoever desires to obtain execution of any order of His Majesty in Council shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to His Majesty was preferred.

(2) Such Court shall transmit the order of His Majesty in Council to the Court which passed the first decree appealed from, or to such other Court as His Majesty in Council by such order may direct, and shall (upon the application of either party) give such directions as may be required for the execution of the same, and the Court to which the said order is so transmitted

*The Code of Civil Procedure, 1908.**(The First Schedule.)**(Order XLV.—Appeals to the King in Council. Order XLVI.—Reference. Order XLVI.—Review.)*

shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

(3) When any monies expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed at the date of the making of the order by the Secretary of State for India in Council with the concurrence of the Lords Commissioners of His Majesty's Treasury for the adjustment of financial transactions between the Imperial and the Indian Governments.

16. The orders made by the Court which executes the order of His Majesty in Council, relating to execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

ORDER XLVI.*Reference.*

1. Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree,

any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

2. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred;

but no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

3. The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

4. The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

5. Where a case is referred to the High Court under rule 1, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

6. (1) Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

7. (1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not proceeding as to jurisdiction to be so cognizable, failed to exercise a jurisdiction vested in

it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit.

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule.

ORDER XLVII.*Review.*

1. (1) Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or
- (c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

2. An application for review of a decree or order of a Court, not being a High Court, to whom applications for review may be made, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed; but any such application may, if the Judge who passed the decree or made the order has ordered notice to issue under rule 4, sub-rule (2), proviso (a), be disposed of by his successor.

3. The provisions as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review.

4. (1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

(2) Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Provided that—

- (a) no such application shall be granted without previous notice to the opposite party, to enable

*The Code of Civil Procedure, 1908.**(The First Schedule.)*

(Order XLVII.—Review. Order XLVIII.—Miscellaneous. Order XLIX.—Chartered High Courts. Order L.—Provincial Small Cause Courts.)

him to appear and be heard in support of the decree or order, a review of which is applied for: and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

5. Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continues attached to the Court

at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

6. (1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

7. (1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to on the ground that the application was—

- (a) in contravention of the provisions of rule 2,
- (b) in contravention of the provisions of rule 4, or
- (c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

8. When an application for review is granted, a note thereof shall be made in the Registry of application, granted, and order for re-hearing, register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

9. No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

ORDER XLVIII.

Miscellaneous.

1. (1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

(2) The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

2. All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.

3. The forms given in the appendices, with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned.

Use of forms in appendices.

ORDER XLIX.

Chartered High Courts.

1. Notice to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the processes of High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to respondents may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs.

2. Nothing in this schedule shall be deemed to limit or otherwise affect any rules in respect of force at the commencement of this Code for the taking of evidence or the recording of judgments and orders by a Chartered High Court.

3. The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely:—

- (1) rule 10 and rule 11, clauses (b) and (c), of Order VII;
- (2) rule 3 of Order X;
- (3) rule 2 of Order XVI;
- (4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII;
- (5) rules 1 to 8 of Order XX; and
- (6) rule 7 of Order XXXIII (so far as relates to the making of a memorandum);

and rule 35 of Order XLI shall not apply to any such High Court in the exercise of its appellate jurisdiction.

ORDER L.

Provincial Small Cause Courts.

1. The provisions hereinafter specified shall not extend to Courts constituted under the Provincial Small Causes Courts Act, 1887, or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say—

(a) so much of this schedule as relates to—

- (i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits;
- (ii) the execution of decrees against immoveable property or the interest of a partner in partnership property;
- (iii), the settlement of issues; and

*The Code of Civil Procedure, 1908.**(The First Schedule.)**(Order LI.—Presidency Small Cause Courts.)*

(b) the following rules and orders, —

Order II, r. 1 (frame of suit);
Order X, r. 3 (record of examination of parties);
Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment;
Order XVIII, rules 5 to 12 (evidence);
Orders XL I to XL V (appeals);
Order XLVII, rules 2, 3, 5, 6, 7 (review);
Order LI.

ORDER LI.

Presidency Small Cause Courts.

(1) Save as provided in rules 22 and 23 of Order V, Presidency Small Cause Courts, rules 4 and 7 of Order XXI, and rule 4 of Order XXVI, and by the Presidency Small Cause Courts Act, 1882, this schedule shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

*The Code of Civil Procedure 1898.
(The First Schedule.—Appendix A.—Pleadings.)*

APPENDIX A.

PLEADINGS.

(1) TITLES OF SUITS.

IN THE COURT OF

A. B. (add description and residence) Plaintiff,
against

C. D. (add description and residence) Defendant.

(2) DESCRIPTION OF PARTIES IN PARTICULAR CASES.

The Secretary of State for India in Council

The Advocate General of

The Collector of

The State of

The A. B. Company, Limited, having its registered office at

A. B., a public officer of the C. D. Company.

A. B. (add description and residence), on behalf of himself and all other creditors of C. D., late of (add description and residence).

A. B. (add description and residence), on behalf of himself and all other holders of debentures issued by the Company, Limited.

The Official Receiver.

A. B., a minor (add description and residence), by C. D. [or by the Court of Wards], his next friend.

A. B. (add description and residence), a person of unsound mind [or of weak mind], by C. D., his next friend.

A. B., a firm carrying on business in partnership at

A. B. (add description and residence), by his constituted attorney C. D. (add description and residence).

A. B. (add description and residence), Shebait of Thakur

A. B. (add description and residence), executor of C. D., deceased.

A. B. (add description and residence), heir of C. D., deceased.

The Code of Civil Procedure 1898.
(*The First Schedule.—Appendix A.—Pleadings.*)

(3) PLAINTS.

No. 1.

MONEY LENT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the	day of	19	he lent the defendant	rupees repay-
able on the	day of			
2. The defendant has not paid the same, except			rupees paid on the	
day of	19			

[If the plaintiff claims exemption from any law of limitation, say :—]

3. The plaintiff was a minor [or insane] from the	day of	till the	day
of			
4. [Facts showing when the cause of action arose and that the Court has jurisdiction.]			
5. The value of the subject-matter of the suit for the purpose of jurisdiction is rupees			
and for the purpose of court-fees is	ruppees.		
6. The plaintiff claims	rupees, with interest at	per cent. from the	
day of	19		

No. 2.

MONEY OVERPAID.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the	day of	19	the plaintiff agreed to buy and the
defendant agreed to sell	bars of silver at	annas per tola of fine silver.	
2. The plaintiff procured the said bars to be assayed by <i>E. F.</i> , who was paid by the defendant for			
such assay, and <i>E. F.</i> declared each of the bars to contain 1,500 tolas of fine silver, and the plaintiff			
accordingly paid the defendant	rupees.		
3. Each of the said bars contained only 1,200 tolas of fine silver, of which fact the plaintiff was ignorant			
when he made the payment.			
4. The defendant has not repaid the sum so overpaid.			

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 3.

GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the	day of	19	<i>E. F.</i> sold and delivered to the defendant [one
hundred barrels of flour, or the goods mentioned in the schedule hereto annexed, or sundry goods].			
2. The defendant promised to pay		rupees for the said goods on delivery [or	
on the	day of	some day before the plaint was filed].	
3. He has not paid the same.			
4. <i>E. F.</i> died on the	day of	19	By his last will he appointed his brother, the
plaintiff, his executor.			

[As in paras. 4 and 5 of Form No. 1.]

7. The plaintiff as executor of *E. F.* claims [Relief claimed].

No. 4.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the	day of	19	plaintiff sold and delivered to the defendant
any [sundry articles of house-furniture], but no express agreement was made as to the price.			
2. The goods were reasonably worth		rupees.	
3. The defendant has not paid the money.			

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

*The Code of Civil Procedure 1898.**(The First Schedule.—Appendix A.—Pleadings.)*

No. 5.

GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , E. F. agreed with the plaintiff that the plaintiff should make for him [six tables and fifty chairs], and that E. F. should pay for the goods on delivery rupees.
2. The plaintiff made the goods, and on the day of 19 offered to deliver them to E. F., and has ever since been ready and willing so to do.
3. E. F. has not accepted the goods or paid for them.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 6.

DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff put up at auction sundry [goods], subject to the condition that all goods not paid for and removed by the purchaser within [ten days] after the sale should be re-sold by auction on his account, of which condition the defendant had notice.
2. The defendant purchased [one crate of crockery] at the auction at the price of rupees.
3. The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for [ten days] after.
4. The defendant did not take away the goods purchased by him, nor pay for them within [ten days] after the sale, nor afterwards.
5. On the day of 19 , the plaintiff re-sold the [crate of crockery], on account of the defendant, by public auction, for rupees.
6. The expenses attendant upon such re-sale amounted to rupees.
7. The defendant has not paid the deficiency thus arising, amounting to rupees.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 7.

SERVICES AT A REASONABLE RATE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. Between the day of 19 , and the day of 19 , at , plaintiff [executed sundry drawings, designs and diagrams] for the defendant, at his request; but no express agreement was made as to the sum to be paid for such services.
2. The services were reasonably worth rupees.
3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 8.

SERVICES AND MATERIALS AT A REASONABLE COST.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , at , the plaintiff built a house [known as No. , in], and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the amount to be paid for such work and materials.
2. The work done and materials supplied were reasonably worth rupees.
3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 9.

USE AND OCCUPATION.

(Title.)

A. B., the above-named plaintiff, executor of the will of X. Y., deceased, states as follows:—

1. That the defendant occupied the [house No. , Street], by permission of the said X. Y., from the day of 19 , until the day of 19 , and no agreement was made as to payment for the use of the said premises.

The Code of Civil Procedure 1898.
(The First Schedule.—Appendix A.—Pleadings.)

2. That the use of the said premises for the said period was reasonably worth rupees.
 3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff as executor of X. Y. claims [Relief claimed].

No. 10.

ON AN AWARD.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, the plaintiff and defendant, having a difference between them concerning [a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay], agreed in writing to submit the difference to the arbitration of E. F. and G. H., and the original document is annexed hereto.
 2. On the day of 19, the arbitrators awarded that the defendant should [pay the plaintiff rupees].
 3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 11.

ON A FOREIGN JUDGMENT.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, at in Court of the State [or Kingdom], of , the that State [or Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff rupees, with interest from the said date.
 2. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 12.

AGAINST SURETY FOR PAYMENT OF RENT.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, E. F. hired from the plaintiff for the term of years, the [house No. , Street], at the annual rent of rupees, payable [monthly].
 2. The defendant agreed, in consideration of the letting of the premises to E. F., to guarantee the punctual payment of the rent.
 3. The rent for the month of 19, amounting to rupees, has not been paid.

[If, by the terms of the agreement, notice is required to be given to the surety, add:—]

4. On the day of 19, the plaintiff gave notice to the defendant of the non-payment of the rent, and demanded payment thereof.
 5. The defendant has not paid the same.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 13.

BREACH OF AGREEMENT TO PURCHASE LAND.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, the plaintiff and defendant entered into an agreement, and the original document is hereto annexed.
 [Or, On the day of 19, the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of for rupees].
 2. On the day of 19, the plaintiff, being then the absolute owner of the property [and the same being free from all incumbrances as was made

The Code of Civil Procedure 1908.

(The First Schedule.—Appendix A.—Pleadings.)

to appear to the defendant], tendered to the defendant a sufficient instrument of transfer of the same [or, was ready and willing, and is still ready and willing, and offered, to transfer the same to the defendant by a sufficient instrument] on the payment by the defendant of the sum agreed upon.

3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 14.

NOT DELIVERING GOODS SOLD.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff on the day of 19, and that the plaintiff should pay therefor rupees on delivery.

2. On the [said] day the plaintiff was ready and willing, and offered, to pay the defendant the said sum upon delivery of the goods.

3. The defendant has not delivered the goods, and the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 15.

WRONGFUL DISMISSAL.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, or in the capacity of foreman, or as the case may be], and that the defendant should employ the plaintiff as such for the term of [one year] and pay him for his services rupees (monthly).

2. On the day of 19, the plaintiff entered upon the service of the defendant and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year whereof the defendant always has had notice.

3. On the day of 19, the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 16.

BREACH OF CONTRACT TO SERVE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] salary of rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].

2. The plaintiff has always been ready and willing to perform his part of the agreement [and on the day of 19, offered so to do].

3. The defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards, on the day of 19, he refused to serve the plaintiff as aforesaid.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 17.

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, the plaintiff and defendant entered into an agreement, and the original document is hereto annexed. [Or state the tenor of the contract.]

2. The plaintiff duly performed all the conditions of the agreement on his part.]

3. The defendant [built the house referred to in the agreement in a bad and unworkmanlike manner].

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

*The Code of Civil Procedure 1908.**(The First Schedule.—Appendix A.—Pleadings.)*

2. The plaintiff was thereby induced to sell [and deliver] to the defendant, [dry goods] of the value of rupees.

3. The said representations were false [or, state the particular falsehoods] and were then known by the defendant to be so.

4. The defendant has not paid for the goods. [Or, if the goods were not delivered]. The plaintiff, in preparing and shipping the goods and procuring their restoration, expended rupees.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 22.

FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, the defendant represented to the plaintiff that E. F. was solvent and in good credit, and worth rupees over all his liabilities [or, that E. F. then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit].

2. The plaintiff was thereby induced to sell to E. F. [rice] of the value of rupees [on months credit].

3. The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [or, to deceive and injure the plaintiff].

4. E. F. [did not pay for the said goods at the expiration of the credit aforesaid, or] has not paid for the said rice, and the plaintiff has wholly lost the same.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 23.

POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain land called and situate in , and of a well therein, and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted.

2. On the day of 19, the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.

3. In consequence the water in the well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the well and water.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 24.

CARRYING ON A NOXIOUS MANUFACTURE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called , situate in

2. Ever since the day of 19, the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the lands.

3. Thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.

4. The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 25.

OBSTRUCTING A RIGHT OF WAY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of].

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix A.—Pleadings.)

which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, etc., as in para. 3.]

No. 30.

INJURIES CAUSED BY NEGLIGENT DRIVING.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is a shoemaker, carrying on business at . The defendant is a merchant of .
 2. On the day of , 19 , the plaintiff was walking southward along Chowringhee, in the City of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Middleton Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Middleton Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 31.

FOR MALICIOUS PROSECUTION.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant obtained a warrant of arrest from [a Magistrate of the said city, or as the case may be] on a charge of , and the plaintiff was arrested thereon, and imprisoned for [days, or hours, and gave bail in the sum of rupees to obtain his release].

2. In so doing the defendant acted maliciously and without reasonable or probable cause.

3. On the day of 19 , the Magistrate dismissed the complaint of the defendant and acquitted the plaintiff.

4. Many persons, whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; or, in consequence of the said arrest, the plaintiff lost his situation as clerk to one E. F.; or in consequence the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 32.

MOVEABLES WRONGFULLY DETAINED.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , plaintiff owned [or state facts showing a right to the possession] the goods mentioned in the schedule hereto annexed [or describe the goods], the estimated value of which is rupees.

2. From that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3. Before the commencement of the suit, to wit on the day of 19 , the plaintiff demanded the same from the defendant, but he refused to deliver them.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims—

(1) delivery of the said goods, or rupees, in case delivery cannot be had;
 (2) rupees compensation for the detention thereof.

The Schedule.

No. 33.

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant C. D., for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities].

*The Code of Civil Procedure 1908.**(The First Schedule.—Appendix A.—Pleadings.)*

2. The plaintiff was hereby induced to sell and deliver to *C. D.*, [one hundred boxes of tea], the estimated value of which is rupees.

3. The said representations were false, and were then known by *C. D.* to be so, [or, at the time of making the said representations, *C. D.* was insolvent, and knew himself to be so].

4. *C. D.* afterwards transferred the said goods to the defendant *E. F.* without consideration [or who had notice of the falsity of the representation].

[As in paras. 4 and 5 of Form No. 1.]

7. The plaintiff claims—

(1) delivery of the said goods, or rupees, in case delivery cannot be had ;
 (2) rupees compensation for the detention thereof.

No. 34.

RESCISSON OF A CONTRACT ON THE GROUND OF MISTAKE.

(Title.)

A. *B.*, the above-named plaintiff, states as follows :—

1. On the day of 19, the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at , contained [ten bighas].

2. The plaintiff was thereby induced to purchase the same at the price of rupees in the belief that the said representation was true, and signed an agreement, of which the original is hereto annexed. But the land has not been transferred to him.

3. On the day of 19 the plaintiff paid the defendant rupees as part of the purchase-money.

4. That the said piece of ground contained in fact only [five bighas].

[As in paras. 4 and 5 of Form No. 1.]

7. The plaintiff claims—

(1) rupees, with interest from the day of 19 ;
 (2) that the said agreement be delivered up and cancelled.

No. 35.

AN INJUNCTION RESTRAINING WASTE.

(Title.)

A. *B.*, the above-named plaintiff, states as follows :—

1. The plaintiff is the absolute owner of [describe the property].

2. The defendant is in possession of the same under a lease from the plaintiff.

3. The defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[Pecuniary compensation may also be claimed.]

No. 36.

INJUNCTION RESTRAINING NUISANCE.

(Title.)

A. *B.*, the above-named plaintiff, states as follows :—

1. Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No. , Street, Calcutta].

2. The defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street].

On the day of 19, the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].

4. In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same.

[As in paras. 4 and 5 of Form No. 1.]

The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix A.—Pleadings.)

No. 37.
 PUBLIC NUISANCE.
 (Title.)

A. B., the above-named plaintiff, states as follows :—

1. The defendant has wrongly heaped up earth and stones on a public road known as Street at so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act.
2. The plaintiff have obtained the consent in writing of the Advocate General [or of the Collector or other officer appointed in this behalf] to the institution of this suit.

[As in paras. 4 and 5 of Form No. 1.]

The plaintiff claims—

- (1) a declaration that the defendant is not entitled to obstruct the passage of the public along the said public road;
- (2) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid.

No. 38.

INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

[As in Form No. 27.]

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 39.

RESTORATION OF MOVEABLE PROPERTY THREATENED WITH DESTRUCTION, AND FOR AN INJUNCTION.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. Plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grand-father which was executed by an eminent painter], and of which no duplicate exists [or, state any facts showing that the property is of a kind that cannot be replaced by money].
2. On the day of 19, he deposited the same for safe keeping with the defendant.
3. On the day of 19, he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.
4. The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.
5. No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting].

[As in paras. 4 and 5 of Form No. 1.]

8. The plaintiff claims—

- (1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said painting;
- (2) that he be compelled to deliver the same to the plaintiff.

No. 40.

INTERPLEADER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. Before the date of the claims hereinafter mentioned *G. H.* deposited with the plaintiff [describe the property] for [safe-keeping].
2. The defendant *C. D.* claims the same [under an alleged assignment thereof to him from *G. H.*].
3. The defendant *E. F.* also claims the same [under an order of *G. H.* transferring the same to him].
4. The plaintiff is ignorant of the respective rights of the defendants.
5. He has no claim upon the said property other than for charges and costs, and is ready and willing to deliver it to such persons as the Court shall direct.
6. The suit is not brought by collusion with either of the defendants.

[As in paras. 4 and 5 of Form No. 1.]

9. The plaintiff claims—

- (1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto;
- (2) that they be required to interplead together concerning their claims to the said property;
- (3) that some person be authorized to receive the said property pending such litigation;
- (4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.

The Code of Civil Procedure 1908.

(The First Schedule.—Appendix A.—Pleadings.)

No. 41.

ADMINISTRATION BY CREDITOR ON BEHALF OF HIMSELF AND ALL OTHER CREDITORS.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. E. F., late of [here insert nature of debt and security, if any].
 tiff in the sum of , was at the time of his death, and his estate still is, indebted to the plain-

2. E. F. died on or about the day of . By his last will, dated the day of , he appointed C. D. his executor [or devised his estate in trust, etc., or died intestate, as the case may be].

3. The will was proved by C. D. [or letters of administration were granted, etc.].

4. The defendant has possessed himself of the moveable [and immoveable, or the proceeds of the immoveable] property of E. F., and has not paid the plaintiff his debt.

[As in paras. 4 and 5 of Form No. 1.]

7. The plaintiff claims that an account may be taken of the moveable [and immoveable] property of E. F., deceased, and that the same may be administered under the decree of the Court.

No. 42.

ADMINISTRATION BY SPECIFIC LEGATEE.

(Title.)

[Alter Form No. 41 thus]—

[Omit paragraph 1 and commence paragraph 2] E. F., late of [here insert name of legatee].
 day of . By his last will, dated the day of , he appointed C. D. his executor, and bequeathed to the plaintiff [here state the specific legacy].

For paragraph 4 substitute—

The defendant is in possession of the moveable property of E. F., and, amongst other things, of the said [here name the subject of the specific bequest].

For the commencement of paragraph 7 substitute—

The plaintiff claims that the defendant may be ordered to deliver to him the said [here name the subject of the specific bequest], or that, etc.

No. 43.

ADMINISTRATION BY PECUNIARY LEGATEE.

(Title.)

[Alter Form No. 41 thus]—

[Omit paragraph 1 and substitute for paragraph 2] E. F., late of [here insert name of legatee].
 the day of . By his last will, dated the day of , he appointed C. D. his executor, and bequeathed to the plaintiff a legacy of , died on or about day of rupees.

In paragraph 4 substitute "legacy" for "debt."

Another form.

(Title.)

E. F., the above-named plaintiff, states as follows:—

1. A. B., of K. in the , died on the day of . By his last will, dated the day of , he appointed the defendant and M. N. [who died in the testator's lifetime] his executors, and bequeathed his property, whether moveable or immoveable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immoveable property for the person who would be the testator's heir-at-law, and as to his moveable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The will was proved by the defendant on the day of . The plaintiff has not been married.

3. The testator was at his death entitled to moveable and immoveable property; the defendant entered into the receipt of the rents of the immoveable property and got in the moveable property; he has sold some part of the immoveable property.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims—

(1) to have the moveable and immoveable property of A. B. administered in this Court, and for that purpose to have all proper directions given and accounts taken;

(2) such further or other relief as the nature of the case may require.

No. 44.

EXECUTION OF TRUSTS.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. He is one of the trustees under an instrument of settlement bearing date on or about the day of made upon the marriage of E. F. and G. H., the father and mother of

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix A.—Pleadings.)

the defendant [or an instrument of transfer of the estate and effects of *E. F.* for the benefit of *C. D.*, the defendant, and the other creditors of *E. F.*].

2. *A. B.* has taken upon himself the burden of the said trust, and is in possession of [or of the proceeds of] the moveable and immoveable property transferred by the said instrument.

3. *C. D.* claims to be entitled to a beneficial interest under the instrument.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff is desirous to account for all the rents and profits of the said immoveable property [and the proceeds of the sale of the said, or of part of the said, immoveable property, or moveable, or the proceeds of the sale of, or of part of, the said moveable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of *C. D.*, the defendant, and all other persons who may be interested in such administration, in the presence of *C. D.*, and such other persons so interested as the Court may direct, or that *C. D.* may show good cause to the contrary.

[*N. B.—Where the suit is by a beneficiary, the plaint may be modelled, mutatis mutandis, on the plaint by a legatee.*]

No. 45.

FORECLOSURE OR SALE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is mortgagee of lands belonging to the defendant.

2. The following are the particulars of the mortgage:—

- (a) (date);
- (b) (names of mortgagor and mortgagee);
- (c) (sum secured);
- (d) (rate of interest);
- (e) (property subject to mortgage);
- (f) (amount now due);
- (g) (if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims).

(If the plaintiff is mortgagee in possession, add)

3. The plaintiff took possession of the mortgaged property on the _____ day of _____ and is ready to account as mortgagee in possession from that time.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims:—

(1) payment, or in default [sale or] foreclosure [and possession];

[Where Order 34, rule 6, applies.]

(2) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be reserved to the plaintiff to apply for a decree for the balance.

No. 46.

REDEMPTION.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is mortgagor of lands of which the defendant is mortgagee.

2. The following are the particulars of the mortgage:—

- (a) (date);
- (b) (names of mortgagor and mortgagee);
- (c) (sum secured);
- (d) (rate of interest);
- (e) (property subject to mortgage);
- (f) (if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims).

(If the defendant is mortgagee in possession, add)

3. The defendant has taken possession [or has received the rents] of the mortgaged property.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims to redeem the said property and to have the same reconveyed to him [and to have possession thereof].

No. 47.

SPECIFIC PERFORMANCE (No. 1).

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. By an agreement dated the _____ day of _____ and signed by the defendant, he contracted to buy of [or sell to] the plaintiff certain immoveable property therein described and referred to, for the sum of _____ rupees.

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix A.—Pleadings.)

2. The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.
3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [or to accept a transfer and possession of the said property] and to pay the costs of the suit.

No. 48.

SPECIFIC PERFORMANCE (No. 2).

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19, the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed.

The defendant was absolutely entitled to the immoveable property described in the agreement.

2. On the day of 19, the plaintiff tendered rupees to the defendant, and demanded a transfer of the said property by a sufficient instrument.

3. On the day of 19, the plaintiff again demanded such transfer [or the defendant refused to transfer the same to the plaintiff].

4. The defendant has not executed any instrument of transfer.

5. The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

[As in paras. 4 and 5 of Form No. 1.]

8. The plaintiff claims—
(1) that the defendant transfers the said property to the plaintiff by a sufficient instrument [*following the terms of the agreement*];
(2) rupees compensation for withholding the same.

No. 49.

PARTNERSHIP.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. He and C. D., the defendant, have been for years [or months] past carrying on business together under articles of partnership in writing, [or under a deed, or under a verbal agreement].

2. Several disputes and differences have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in partnership with advantage to the partners. [Or the defendant has committed the following breaches of the partnership articles :—

(1)
(2)
(3)

[As in paras. 4 and 5 of Form No. 1.]

5. The plaintiff claims—

- (1) dissolution of the partnership ;
- (2) that accounts be taken ;
- (3) that a receiver be appointed.

(N. B.—In suits for the winding-up of any partnership, omit the claim for dissolution; and instead insert a paragraph stating the facts of the partnership having been dissolved.)

(4) WRITTEN STATEMENTS.

General defences.

Denial.	The defendant denies that (<i>set out facts</i>). The defendant does not admit that (<i>set out facts</i>). The defendant admits that _____ but says that
Protest.	The defendant denies that he is a partner in the defendant firm of The defendant denies that he made the contract alleged or any contract with the plaintiff.

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(*The First Schedule.—Appendix A.—Pleadings.*)

Limitation.	The defendant denies that he contracted with the plaintiff as alleged or at all.		
	The defendant admits assets but not the plaintiff's claim.		
	The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them.		
Jurisdiction.	The suit is barred by article	or article	of the second schedule to the Indian Limitation Act, 1877.
	The Court has no jurisdiction to hear the suit on the ground that (<i>set forth the grounds</i>).		
Insolvency.	On the	day of	a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action.
	The defendant has been adjudged an insolvent.		
	The plaintiff before the institution of the suit was adjudged an insolvent and the right to sue vested in the receiver.		
Minority.	The defendant was a minor at the time of making the alleged contract.		
Payment into Court.	The defendant as to the whole claim (or as to Rs.) part of the money claimed, or as the case may be) has paid into Court Rs. and says that this sum is enough to satisfy the plaintiff's claim (or the part aforesaid).		
Performance remitted.	The performance of the promise alleged was remitted on the		(date).
Rescission.	The contract was rescinded by agreement between the plaintiff and defendant.		
Res judicata.	The plaintiff's claim is barred by the decree in suit (<i>give the reference</i>).		
Estoppel.	The plaintiff is estopped from denying the truth of (<i>insert statement as to which estoppel is claimed</i>) because (<i>here state the facts relied on as creating the estoppel</i>).		
Ground of defence subsequent to institution of suit.	Since the institution of the suit, that is to say, on the day of		

No. 1.

DEFENCE IN SUITS FOR GOODS SOLD AND DELIVERED.

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not Rs. [or]
4. } Except as to Rs. , same as { 1.
5. }
6. }
7. The defendant [or A. B., the defendant's agent] satisfied the claim by payment before suit to the plaintiff [or to C. D., the plaintiff's agent] on the day of 19.
8. The defendant satisfied the claim by payment after suit to the plaintiff on the day of 19.

No. 2.

DEFENCE IN SUITS ON BONDS.

1. The bond is not the defendant's bond.
2. The defendant made payment to the plaintiff on the day according to the condition of the bond.
3. The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond.

No. 3.

DEFENCE IN SUITS ON GUARANTEES.

1. The principal satisfied the claim by payment before suit.
2. The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.

No. 4.

DEFENCE IN ANY SUIT FOR DEBT.

1. As to Rs. 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follows :—

	Rs.
1907, January 25th	150
" February 1st	50
Total	200

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The Code of Civil Procedure 1908.
(*The First Schedule.—Appendix A.—Pleadings.*)

2. As to the whole [or as to Rs. , part of the money claimed] the defendant made tender before suit of Rs. , and has paid the same into Court.

No. 5.

DEFENCE IN SUITS FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, and that it was under the charge or control of the defendant's servants. The carriage belonged to of Street, Calcutta, livery stable keepers employed by the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was, was the servant of the said
2. The defendant does not admit that the said carriage was turned out of Middleton Street, either negligently, suddenly or without warning, or at a rapid or dangerous pace.
3. The defendant says the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.
4. The defendant does not admit the statements contained in the third paragraph of the plaint.

No. 6.

DEFENCE IN ALL SUITS FOR WRONGS.

1. Denial of the several acts [or matters] complained of.

No. 7.

DEFENCE IN SUITS FOR DETENTION OF GOODS.

1. The goods were not the property of the plaintiff.
2. The goods were detained for a lien to which the defendant was entitled.

Particulars are as follows :—

1907, May 3rd. To carriage of the goods claimed from Delhi to Calcutta :—	Rs. 0
45 maunds at Rs. 2 per maund	. . . . .

No. 8.

DEFENCE IN SUITS FOR INFRINGEMENT OF COPYRIGHT.

1. The plaintiff is not the author [*assignee, etc.*].
2. The book was not registered.
3. The defendant did not infringe.

No. 9.

DEFENCE IN SUITS FOR INFRINGEMENT OF TRADE MARK.

1. The trade mark is not the plaintiff's.
2. The alleged trade mark is not a trade mark.
3. The defendant did not infringe.

No. 10.

DEFENCES IN SUITS RELATING TO NUISANCES.

1. The plaintiff's lights are not ancient [or deny his other alleged prescriptive rights].
2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.
3. The defendant denies that he or his servants pollute the water [or do what is complained of].

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(The First Schedule.—Appendix A.—Pleadings.)

[If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of the claim, i.e., whether by prescription, grant or what.]

4. The plaintiff has been guilty of laches of which the following are particulars:—

1870. Plaintiff's mill began to work.
1871. Plaintiff came into possession.
1883. First complaint.

5. As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. [If other grounds are relied on, they must be stated, e.g., limitation as to past damage.]

No. 11.

DEFENCE TO SUIT FOR FORECLOSURE.

1. The defendant did not execute the mortgage.
2. The mortgage was not transferred to the plaintiff (if more than one transfer is alleged, say which is denied).
3. The suit is barred by article 1877. of the second schedule to the Indian Limitation Act, 1877.
4. The following payments have been made, vis.:—

(Insert date.)	Rs.
(Insert date.)	1,000 500

5. The plaintiff took possession on the of and has received the rents ever since.
6. That plaintiff released the debt on the of
7. The defendant transferred all his interest to A. B. by a document, dated

No. 12.

DEFENCE TO SUIT FOR REDEMPTION.

1. The plaintiff's right to redeem is barred by article 1877. of the second schedule to the Indian Limitation Act, 1877.
2. The plaintiff transferred all interest in the property to A. B.
3. The defendant, by a document dated the day of transferred all his interest in the mortgage-debt and property comprised in the mortgage to A. B.
4. The defendant never took possession of the mortgaged property, or received the rents thereof.
(If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.)

No. 13.

DEFENCE TO SUIT FOR SPECIFIC PERFORMANCE.

1. The defendant did not enter into the agreement.
2. A. B. was not the agent of the defendant (if alleged by plaintiff).
3. The plaintiff has not performed the following conditions—(Conditions).
4. The defendant did not—(alleged acts of part performance).
5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matter—(State why).
6. The agreement is uncertain in the following respects—(State them).
7. (or) The plaintiff has been guilty of delay;
8. (or) The plaintiff has been guilty of fraud (or misrepresentation).
9. (or) The agreement is unfair;
10. (or) The agreement was entered into by mistake.
11. The following are particulars of (7), (8), (9) (10) (or as the case may be).
12. The agreement was rescinded under Conditions of Sale, No. 11 (or by mutual agreement).

(In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., the Indian Limitation Act, accord and satisfaction, release, fraud, etc.)

No. 14.

DEFENCE IN ADMINISTRATION SUIT BY PECUNIARY LEGATEE.

1. A. B.'s will contained a charge of debts; he died insolvent; he was entitled at his death to some immovable property which the defendant sold and which produced the net sum of Rs. , and the testator had some moveable property which the defendant got in, and which produced the net sum of Rs. .

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix A.—Pleadings.)

3. The defendant applied the whole of the said sums and the sum of Rs. which the
defendant received from rents of the immoveable property in the payment of the funeral and testamentary
expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the
day of 19, and offered the plaintiff free access to the vouchers to verify such
accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

No. 15.

PROBATE OF WILL IN SOLEMN FORM.

PROBATE OF WILLS IN BOMBAY

1. The said will and codicil of the deceased were not duly executed according to the provisions of the Indian Succession Act, 1865 [or of the Hindu Wills Act, 1870].
2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory and understanding.
3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him whose names are at present unknown to the defendant].
4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant's present knowledge, being [state the nature of the fraud].
5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof, [or of the contents of the residuary clause in the said will, as the case may be].
6. The deceased made his true last will, dated the 1st January, 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims :—

(1) that the Court will pronounce against the said will and codicil propounded by the plaintiff :
(2) that the Court will decree probate of the will of the deceased, dated the 1st January, 1873, in
solemn form of law.

No. 16.

PARTICULARS. (O. 6, T. 5.)

(Title of suit.)

Particulars. The following are the particulars of (here state the matters in respect of which particulars have been ordered) delivered pursuant to the order of the _____ of _____.
(Here set out the particulars ordered in paragraphs if necessary.)

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix B.—Process.)

APPENDIX B.

PROCESS.

No. 1.

SUMMONS FOR DISPOSAL OF SUIT. (O. 5, rr. 1, 5.)

(Title.)

To

[Name, description and place of residence.]

WHEREAS
 has instituted a suit against you for
 you are hereby summoned to appear in this Court in person or by a pleader duly instructed, and able to
 answer all material questions relating to the suit, or who shall be accompanied by some person able to
 answer all such questions, on the day of
 19 , at o'clock in the noon, to answer the claim; and as the day fixed for your
 appearance is appointed for the final disposal of the suit, you must be prepared to produce on that day
 all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of
 your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and
 determined in your absence.

GIVEN under my hand and the seal of the Court, this
 day of 19

Judge.

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have a
 summons from this Court to compel the attendance of any witness, and the production
 of any document that you have a right to call upon the witness to produce, on applying
 to the Court and on depositing the necessary expenses.
 2. If you admit the claim, you should pay the money into Court together with the costs of the
 suit, to avoid execution of the decree, which may be against your person or property,
 or both.

No. 2.

SUMMONS FOR SETTLEMENT OF ISSUES. (O. 5, rr. 1, 5.)

(Title.)

To

[Name, description and place of residence.]

WHEREAS
 has instituted a suit against you for
 you are hereby summoned to appear in this Court in person, or by a pleader duly instructed, and able to
 answer all material questions relating to the suit, or who shall be accompanied by some person able to
 answer all such questions, on the day of
 19 , at o'clock in the noon, to answer the claim; and you are directed to produce on that
 day all the documents upon which you intend to rely in support of your defence.
 Take notice that, in default of your appearance on the day before mentioned, the suit will be heard
 and determined in your absence.

GIVEN under my hand and the seal of the Court, this
 day of 19

Judge.

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have a
 summons from this Court to compel the attendance of any witness, and the production
 of any document that you have a right to call on the witness to produce, on applying to
 the Court and on depositing the necessary expenses.
 2. If you admit the claim, you should pay the money into Court together with the costs of the
 suit, to avoid execution of the decree, which may be against your person or property
 or both.

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix B.—Process.)

No. 3.

SUMMONS TO APPEAR IN PERSON. (O. 5, r. 3.)

(Title.)

To

[Name, description and place of residence.]

WHEREAS has instituted a suit against you for you are hereby summoned to appear in this Court in person on the day of 19 , at o'clock in the noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 4.

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT. (O. 37, r. 2.)

(Title.)

To

[Name, description and place of residence.]

WHEREAS has instituted a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, for Rs. , balance of principal and interest due to him as the of a of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs. and the sum of Rs. for costs.

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 5.

NOTICE TO PERSON WHO, THE COURT CONSIDERS, SHOULD BE ADDED AS CO-PLAINTIFF. (O. 5, r. 10.)

(Title.)

To

[Name, description and place of residence.]

WHEREAS suit against has instituted the above for and whereas it appears necessary that you should be added as a plaintiff in the said suit in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved:

Take notice that you should on or before day of 19 signify to this Court whether you consent to be so added

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

*The Code of Civil Procedure 1908.**(The First Schedule.—Appendix B.—Process.)*

or,

If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.

^{Sword}
Affirmed by the said
day of

before me this

19 .

Empowered under section 139 of the Code of Civil Procedure to administer the oath to deponents.

No. 12.

NOTICE TO DEFENDANT. (O. 9, r. 6.)

(Title.)

To

(Name, description and place of residence.)

WHEREAS this day was fixed for the hearing of the above suit and a summons was issued to you and the plaintiff has appeared in this Court and you did not so appear, but from the return of the Nazir it has been proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons;

Notice is hereby given to you that the hearing of the suit is adjourned this day and that the day of 19 is now fixed for the hearing of the same; in default of your appearance on the day last mentioned the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 13.

SUMMONS TO WITNESS. (O. 16, rr. 1, 5.)

(Title.)

To

WHEREAS your attendance is required to on behalf of the to appear before this Court on the 19 , at o'clock in the forenoon, and to bring with you [or to send to this Court]

A sum of Rs. , being your travelling and other expenses and subsistence allowance for one day, is herewith sent. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in rule 12 of Order XVI of the Code of Civil Procedure.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

NOTICE.—(1) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2) If you are detained beyond the day aforesaid, a sum of Rs. will be tendered to you for each day's attendance beyond the day specified.

No. 14.

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS. (O. 16, r. 10.)

(Title.)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law: and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons: This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued requiring the attendance of the witness in this Court on the 19 day of at o'clock in the forenoon, and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

IY O

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix B.—Process.)

No. 15.

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS. (O. 16, r. 10.)
 (Title.)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such summons: This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued, requiring the attendance of the witness in this Court on the ¹⁹ day of ¹⁹ at ¹⁰ o'clock in the forenoon, and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this ¹⁹ day of ¹⁹.

Judge.

No. 16.

WARRANT OF ATTACHMENT OF PROPERTY OF WITNESS. (O. 16, r. 10.)
 (Title.)

To

The Bailiff of the Court.

WHEREAS the witness cited by ¹⁹ has not, after the expiration of the period limited in the proclamation issued for his attendance, appeared in Court; You are hereby directed to hold under attachment ¹⁹ property belonging to the said witness to the value of ¹⁹ and to submit a return, accompanied with an inventory thereof, within ¹⁹ days.

GIVEN under my hand and the seal of the Court, this ¹⁹ day of ¹⁹.

Judge.

No. 17.

WARRANT OF ARREST OF WITNESS. (O. 16, r. 10.)
 (Title.)

To

The Bailiff of the Court.

WHEREAS ¹⁹ has been duly served with a summons but has failed to attend [absconds and keeps out of the way for the purpose of avoiding service of a summons]; You are hereby ordered to arrest and bring the said ¹⁹ before the Court.

You are further ordered to return this warrant on or before the ¹⁹ day of ¹⁹ with an endorsement certifying the day on and the manner in which it has been executed or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this ¹⁹ day of ¹⁹.

Judge.

No. 18.

WARRANT OF COMMITTAL. (O. 16, r. 16.)
 (Title.)

To

The Officer in charge of the Jail at

WHEREAS the plaintiff (or defendant) in the abovenamed suit has made application to this Court that security be taken for the appearance of evidence (or to produce a document), on the ¹⁹ ; and whereas the Court has called upon the said

security, which he has failed to do; This is to require you to receive the said into your custody in the civil prison and to produce him before this Court at on the said day and on such other day or days as may be hereafter ordered.

GIVEN under my hand and the seal of the Court, this ¹⁹ day of ¹⁹.

Judge.

The Code of Civil Procedure 1908.
(*The First Schedule.—Appendix B.—Process.*)

No. 19.

WARRANT OF COMMITTAL. (O. 16, r. 18.)

(*Title.*)

To

The Officer in charge of the Jail at

WHEREAS , whose attendance is required before this Court in the above named case to give evidence (or to produce a document), has been arrested and brought before the Court in custody; and whereas owing to the absence of the plaintiff (or defendant), the said cannot give such evidence (or produce such document); and whereas the Court has called upon the said to give security for his appearance on the

day of 19 , at which he has failed to do; This is to require you to receive the said into your custody in the civil prison and to produce him before this Court at on the day of 19 .

GIVEN under my hand and the seal of the Court, this day of

19 .

Judge.

*The Code of Civil Procedure 1908.**(The First Schedule.—Appendix C.—Discovery, Inspection and Admission.)***APPENDIX C.**
DISCOVERY, INSPECTION AND ADMISSION.**No. 1.****ORDER FOR DELIVERY OF INTERROGATORIES. (O. 11, r. 1.)**

In the Court of

Civil Suit No.

of 19

A. B. Plaintiff,

against

C. D., E. F. and G. H. Defendants.

Upon hearing ¹⁹ and upon reading the affidavit of ¹⁹ filed the ¹⁹ day of ¹⁹ ; It is ordered that the ¹⁹ be at liberty to deliver to the ¹⁹ interrogatories in writing, and that the said ¹⁹ do answer the interrogatories as prescribed by Order XI, rule 8, and that the costs of this application be

No. 2.**INTERROGATORIES. (O. 11, r. 4.)***(Title as in No. 1, supra.)*

Interrogatories on behalf of the above-named [plaintiff or defendant C. D.] for the examination of the above-named [defendants E. F. and G. H. or plaintiff].

1. Did not, etc.

2. Has not, etc.

etc., etc., etc.

[The defendant E. F. is required to answer the interrogatories numbered .]

[The defendant G. H. is required to answer the interrogatories numbered .]

No. 3.**ANSWER TO INTERROGATORIES. (O. 11, r. 9.)***(Title as in No. 1, supra.)*

The answer of the above-named defendant E. F. to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E. F., make oath and say as follows :—

1. } Enter answers to interrogatories in paragraphs numbered consecutively.

2. }

3. I object to answer the interrogatories numbered on the ground that [state grounds of objection].

No. 4.**ORDER FOR AFFIDAVIT AS TO DOCUMENTS. (O. 11, r. 12.)***(Title as in No. 1, supra.)*

Upon hearing ¹⁹ It is ordered that the ¹⁹ do within ¹⁹ days from the date of this order, answer on affidavit stating which documents are or have been in his possession or power relating to the matter in question in this suit and that the costs of this application be

No. 5.**AFFIDAVIT AS TO DOCUMENTS. (O. 11, r. 13.)***(Title as in No. 1, supra.)*

I, the above-named defendant C. D., make oath and say as follows :—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the first schedule hereto [state grounds of objection].

3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power on [state when and what has become of them, and in whose possession they now are].

5. According to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my pleader or agent, or in the

*The Code of Civil Procedure 1908.**(The First Schedule.—Appendix C.—Discovery, Inspection and Admission.)*

possession, custody or power of any other person on my behalf, any account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.

No. 6.

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION. (O. 11, r. 14.)

(Title as in No. 1, supra.)

Upon hearing day of 19 and upon reading the affidavit of [plaintiff or defendant] on reasonable notice, produce at [insert place of inspection], namely, [insert address], situate at [insert town or city], and that the [plaintiff or defendant] be at liberty to inspect and peruse the documents so produced, and to make notes of their contents. In the meantime it is ordered that all further proceedings be stayed and that the costs of this application be

No. 7.

NOTICE TO PRODUCE DOCUMENTS. (O. 11, r. 16.)

(Title as in No. 1, supra.)

Take notice that the [plaintiff or defendant] requires you to produce for his inspection the following documents referred to in your [plaint or written statement or affidavit] dated the day of 19 [insert date].

[Describe documents required.]

X. V., Pleader for the

To Z., Pleader for the

No. 8.

NOTICE TO INSPECT DOCUMENTS. (O. 11, r. 17.)

(Title as in No. 1, supra.)

Take notice that you can inspect the documents mentioned in your notice of the day of 19 [except the documents numbered in that notice] at [insert place of inspection] on Thursday next, the instant, between the hours of 12 and 4 o'clock. Or, that the [plaintiff or defendant] objects to giving you inspection of documents mentioned in your notice of the day of 19, on the ground that [state the ground]:—

No. 9.

NOTICE TO ADMIT DOCUMENTS. (O. 12, r. 3.)

(Title as in No. 1, supra.)

Take notice that the plaintiff [or defendant] in this suit proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff], his pleader or agent, at [insert place of inspection] on [insert date] between the hours of [insert hours] ; and the defendant [or plaintiff] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered were so served, sent or delivered, respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit.

G. H., pleader [or agent] for plaintiff [or defendant].

To E. F., pleader [or agent] for defendant [or plaintiff].

[Here describe the documents and specify as to each document whether it is original or a copy.]

No. 10.

NOTICE TO ADMIT FACTS. (O. 12, r. 5.)

(Title as in No. 1, supra.)

Take notice that the plaintiff [or defendant] in this suit requires the defendant [or plaintiff] to admit for the purposes of this suit only, the several facts respectively hereunder specified; and the defendant [or plaintiff] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit.

G. H., pleader [or agent] for plaintiff [or defendant].

To E. F., pleader [or agent] for defendant [or plaintiff].

*The Code of Civil Procedure 1908.**(The First Schedule.—Appendix C.—Discovery, Inspection and Admission.)*

The facts, the admission of which is required, are—

1. That M. died on the 1st January, 1890.
2. That he died intestate.
3. That N. was his only lawful son.
4. That O. died on the 1st April, 1896.
5. That O. was never married.

No. 11.

ADMISSION OF FACTS PURSUANT TO NOTICE. (O. 12, r. 5.)

(Title as in No. 1, supra.)

The defendant [or plaintiff] in this suit, for the purposes of this suit only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit :

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [or plaintiff] on any other occasion or by any one other than the plaintiff [or defendant, or party requiring the admission].

*E. F., pleader [or agent] for defendant [or plaintiff].**To G. H., pleader [or agent] for plaintiff [or defendant].*

Facts admitted.	Qualifications or limitations, if any, subject to which they are admitted.
1. That M. died on the 1st January, 1890	1.
2. That he died intestate	2.
3. That N. was his lawful son	3. But not that he was his only lawful son.
4. That O. died	4. But not that he died on the 1st April, 1896.
5. That O. was never married	5.

No. 12.

NOTICE TO PRODUCE (GENERAL FORM). (O. 12, r. 8.)

(Title as in No. 1, supra.)

Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power, containing any entry, memorandum or minute relating to the matters in question in this suit, and particularly

*G. H., pleader [or agent] for plaintiff [or defendant].**To E. F., pleader [or agent] for defendant [or plaintiff].*

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix D.—Decrees.)

APPENDIX D.

DECREES.

No. 1.

DECREE IN ORIGINAL SUIT. (O. 20, rr. 6, 7.)

(Title.)

Claim for

This suit coming on this day for final disposal before
 for the plaintiff and of
 decreed that in the presence of
 sum of Rs. be paid by the for the defendant, it is ordered and
 on account of the costs of this suit, with interest thereon at the rate of and that the
 this date to date of realization. to the per cent. per annum from

Given under my hand and the seal of the Court, this

day of

19

Costs of Suit.

Judge.

Plaintiff.				Defendant.			
	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for plaint . . .				Stamp for power . . .			
2. Do. for power . . .				Do. for petition . . .			
3. Do. for exhibits . . .				Pleader's fee . . .			
4. Pleader's fee on Rs. . .				Subsistence for witnesses . .			
5. Subsistence for witnesses . .				Service of process . . .			
6. Commissioner's fee . . .				Commissioner's fee . . .			
7. Service of process . . .							
Total . . .				Total . . .			

No. 2.

SIMPLE MONEY DECREE. (Section 34.)

(Title.)

Claim for

This suit coming on this day for final disposal before
 for the plaintiff and of in the presence of
 that the do pay to the for the defendant, it is ordered
 interest thereon at the rate of per cent. per annum from the sum of Rs. with
 of the said sum and do also pay Rs. to the date of realization
 per cent. per annum from this date to the date of realization. the costs of this suit with interest thereon at the rate of

Given under my hand and the seal of the Court, this

day of

19

Judge.

IV P

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix D.—Decrees.)

Costs of Suit.

Plaintiff.				Defendant.					
	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
1. Stamp for plaint	Stamp for power . . .	.	.	.	.	.
2. Do. for power	Do. for petition . . .	.	.	.	.	.
3. Do. for exhibits	Pleader's fee . . .	.	.	.	.	.
Pleader's fee on Rs.	Subsistence for witnesses . . .	.	.	.	.	.
Subsistence for witnesses	Service of process . . .	.	.	.	.	.
Commissioner's fee	Commissioner's fee . . .	.	.	.	.	.
Service of process						
Total . . .							Total . . .		

No. 3.

PRELIMINARY DECREE FOR FORECLOSURE. (O. 34, r. 2.)
(Title.)

This suit coming on this day, etc. ; It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the day of 19, is Rs. 1 and it is decreed as follows :—

(1) That if the defendant pays into Court the amount so declared due on or before the said day of 19, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the defendant free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him. [Where the plaintiff claims by derived title add or by those under whom he claims.] [Where the plaintiff is in possession add and shall put the defendant in possession of the property.]

(2) That if such payment is not made on or before the said day of 19 the defendant shall be debarred from all right to redeem the property.

Schedule.

Description of the mortgaged property.

No. 4.

PRELIMINARY DECREE FOR SALE. (O. 34, r. 4.)
(Title.)

This suit coming on this day, etc. ; It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the day of 19 is Rs. 1 and that such amount shall carry interest at the rate of per cent. per annum until realization ; and it is decreed as follows :—

(1) That if the defendant pays into Court the amount so declared due on or before the said day of 19, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the defendant free from the mortgagee and from all incumbrances created by the plaintiff or any person claiming under him. [Where the plaintiff claims by derived title add or by those under whom he claims.] [Where the plaintiff is in possession add and shall put the defendant in possession of the property.]

(2) That if such payment is not made on or before the said day of 19 the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is declared due to the plaintiff as aforesaid together with subsequent interest and subsequent costs, and that the balance, if any, be paid to the defendant.

(3) That if the net proceeds of the sale are insufficient to pay such amount and such subsequent interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

Schedule.

Description of the mortgaged property.

No. 5.

PRELIMINARY DECREE FOR REDEMPTION. (O. 34, r. 7.)
(Title.)

This suit coming on this day, etc. ; It is hereby declared that the amount due to the defendant on account of principal, interest and costs calculated up to the day of 19 is Rs. 1

*The Code of Civil Procedure 1908.**(The First Schedule.—Appendix D.—Decrees.)*

and it is decreed as follows :—

(1) That if the plaintiff pays into Court the amount so declared due on or before the said day of 19, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him. [Where the defendant claims by derived title add or by those under whom he claims.] [Where the defendant is in possession add and shall put the plaintiff in possession of the property.]

(2) That if such payment is not made on or before the said day of 19, the plaintiff shall be debarred from all right to redeem the property. [If the mortgage is simple or usufructuary substitute the property shall be sold.]

*Schedule.**Description of the mortgaged property.***No. 6.****DECREE FOR FORECLOSURE.—FIRST MORTGAGEE v. SECOND MORTGAGEE AND MORTGAGOR.—
SUCCESSIVE PERIODS FOR REDEMPTION.***(Title.)*

It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the day of 19 (a) is Rs. x, and that on the day of 19 (b) there will be due to the plaintiff for interest the further sum of Rs. , making in all Rs. y; and it is further declared that on the day of 19 (b) there will be due to the first defendant on account of principal, interest and costs Rs. z;

and it is decreed as follows :—

(1) That if the first defendant pays into Court the said sum of Rs. x on or before the said day of 19 (a) the plaintiff shall deliver up, etc. (as in Form No. 3).

(2) That in default of the first defendant paying the said sum on or before the said day he shall be debarred from all right to redeem the property.

(3) That in case of such foreclosure and if the second defendant pays into Court the said sum of Rs. y, on or before the day of 19, (b) the plaintiff shall deliver up, etc. (as in Form No. 3).

(4) That in default of the second defendant paying the said sum on or before the said day he shall be debarred from all right to redeem the property.

(5) That in case the first defendant shall redeem the mortgaged property, if the second defendant pays into Court the said sums of Rs. y and Rs. z on or before the day of 19, (b) the first defendant shall deliver up, etc. (as in Form No. 3).

(6) That in default of the second defendant paying the said sums on or before the said day he shall be debarred from all right to redeem the property. [Where the second defendant is in possession add and shall put the first defendant in possession of the property.]

No. 7.**DECREE FOR SALE.—FIRST MORTGAGEE v. SECOND MORTGAGEE AND MORTGAGOR.—ONE PERIOD FOR
REDEMPTION.***(Title.)*

It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the day of 19 is Rs. x, and that on the said day there will be due to the first defendant on account of principal, interest and costs Rs. y;

and it is decreed as follows :—

(1) That if the defendants or either of them pay into Court the said sum of Rs. x on or before the said day of 19 the plaintiff shall deliver up, etc. (as in Form No. 4).

(2) That if payment of the said sum is not made on or before the day of 19 the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court to the credit of this suit, and applied, first, in payment to the plaintiff of the said sum of Rs. x and such subsequent interest and costs as may be allowed by the Court; secondly, in payment to the first defendant of the said sum of Rs. y and such subsequent interest and costs as aforesaid; and that the balance, if any, be paid to the second defendant.

(3) That in case the defendants or either of them shall pay the said sum of Rs. x as aforesaid, he or they shall be at liberty to apply to the Court that the plaintiff's mortgage may be kept alive for the benefit of the person making the said payment or otherwise as he or they may be advised.

(4) That if the net proceeds of the sale are insufficient to pay the said sum of Rs. x and such subsequent interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

(a) Insert a day within six months from the date of decree.
(b) Insert a day within three months from the date mentioned in (a).

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix D.—Decrees.)

No. 8.

DECREE FOR SALE.—SECOND MORTGAGEE v. FIRST MORTGAGEE AND MORTGAGOR.—ONE PERIOD FOR REDEMPTION.

(Title.)

[Insert declarations of the amounts due to the plaintiff Rs. x and to the first defendant Rs. y as in Form No. 7.]

And it is decreed as follows:—

(1) That if the plaintiff or the second defendant pays into Court the said sum of Rs. x on or before the said day of 19th, the first defendant shall deliver up, etc. (as in Form No. 4).

(2) That if payment of the said sum is not made on or before the day of 19th, the first defendant shall be at liberty to apply that the suit be dismissed or for the sale of the mortgaged property; and in case he shall apply for a sale the mortgaged property or a sufficient part thereof shall be sold free from the incumbrances of the plaintiff and first defendant, and the proceeds of the sale (after defraying the expenses of the sale) shall be paid into Court and applied, first, in payment to the first defendant of the said sum of Rs. x and such subsequent interest and costs as may be allowed by the Court: secondly, in payment to the plaintiff of the said sum of Rs. y and such subsequent interest and costs as aforesaid: and that the balance, if any, be paid to the second defendant.

(3) That if the plaintiff shall pay the said sum of Rs. x into Court on or before the day of 19th, the second defendant shall be at liberty to pay into Court the said sum and the sum of Rs. y on or before the day of 19th, and thereupon the plaintiff shall deliver up, etc. (as in Form No. 4).

(4) That if the plaintiff shall pay the said sum as aforesaid but the second defendant shall fail to pay the said sums as aforesaid the mortgaged property or a sufficient part thereof shall be sold, and the proceeds of the sale (after defraying the expenses of the sale) shall be applied in payment to the plaintiff of the said sums of Rs. x and Rs. y and such subsequent interest and costs as may be allowed by the Court, and that the balance, if any, be paid to the second defendant.

(5) That if the net proceeds of the sale are insufficient to pay the said sums, interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

No. 9.

DECREE FOR SALE.—SUB-MORTGAGEE v. MORTGAGEE AND MORTGAGOR, THE AMOUNT OF THE ORIGINAL MORTGAGE EXCEEDING THAT OF THE SUB-MORTGAGE.

(Title.)

[Insert declarations of the amounts due to the plaintiff Rs. x and to the first defendant Rs. y as in Form No. 7.]

And it is decreed as follows:—

(1) The first defendant and the second defendant shall be at liberty to pay into Court the said sums of Rs. x and Rs. y respectively on or before the day of 19th, and upon either of the said payments being made the plaintiff shall deliver up, etc. (as in Form No. 4), and thereupon the sum of Rs. x shall be paid to the plaintiff.

(2) In the event of payment by the second defendant as aforesaid the first defendant shall also deliver up, etc. (as in Form No. 4), and thereupon the residue (after payment to the plaintiff as aforesaid) shall be paid to the first defendant.

(3) In default of payment by the first and second defendants as aforesaid the mortgaged property or a sufficient part thereof shall be sold, and the proceeds of the sale (after deducting the expenses of the sale) shall be paid into Court and applied first in payment to the plaintiff of the said sum of Rs. x and such subsequent interest and costs as may be allowed by the Court (but so that the aggregate amount of principal and interest shall not exceed the amount of principal and interest due to the first defendant); secondly, in payment to the first defendant of the excess of Rs. y over Rs. x and such subsequent interest and costs as aforesaid; and that the balance, if any, be paid to the second defendant.

(4) In the event of payment by the first defendant and in default of payment by the second defendant as aforesaid, the first defendant shall be at liberty to apply for the sale of the mortgaged property, and thereupon the same or a sufficient part thereof shall be sold, and the net sale-proceeds shall be applied in payment to the first defendant of the said sum of Rs. y and such further interest and costs as may be allowed by the Court, and the balance, if any, shall be paid to the second defendant.

(5) That if the net proceeds of the sale are insufficient to pay the aforesaid sums with further interest and costs the plaintiff or the first defendant, as the case may be, shall be at liberty to apply for a personal decree for the amount of the balance.

No. 10.

FINAL DECREE FOR FORECLOSURE. (O. 34, r. 3.)

(Title.)

Upon reading the decree passed in the above suit on the 19th, and the application of the plaintiff dated the day of 19th and after hearing pleader for the plaintiff and pleader for the defendant, and it appearing that the payment directed by the said decree has not been made:

It is hereby decreed as follows:—

That the defendant and all persons claiming through or under him be debarred from all right to redeem the mortgaged property set out and described in the schedule hereunto annexed. [Where the defendant is in possession add and shall put the plaintiff in possession of the said property.]

Schedule.

Description of the mortgaged property.

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix D.—Decrees.)

No. 11.

DECREE AGAINST MORTGAGOR PERSONALLY. (O. 34, r. 6.)

(Title.)

Whereas the net proceeds of the sale held under the final decree for sale passed in this suit on the day of ¹⁹ , and now in Court to the credit of this suit, amount to Rs. y , and there is now due to the plaintiff the sum of Rs. x mentioned in the said decree together with the further sum of Rs. z interest thereon at the rate of 6 per cent. per annum from the ¹⁹ day of 19 to this day, and also the sum of Rs. w for his costs of this suit subsequent to the decree, making a balance due to the plaintiff of Rs. s ; And whereas it appears to this Court that the defendant is personally liable for the said balance

It is hereby decreed as follows:—

(1) That the said sum of Rs. y be paid out of Court to the plaintiff.
 (2) That the defendant do pay to the plaintiff the said sum of Rs. s with interest thereon at the rate of 6 per cent. per annum from this day to the date of realization of the said sum.

No. 12.

DECREE FOR RECTIFICATION OF INSTRUMENT.

(Title.)

It is hereby declared that the ¹⁹, dated the ¹⁹ day of ¹⁹, does not truly express the intention of the parties to such And it is decreed that the said be rectified by

No. 13.

DECREE TO SET ASIDE A TRANSFER IN FRAUD OF CREDITORS.

(Title.)

It is hereby declared that the ¹⁹, dated the ¹⁹ day of ¹⁹, is void as against the plaintiff and and made between ¹⁹ and all other the creditors, if any, of the defendant

No. 14.

INJUNCTION AGAINST PRIVATE NUISANCE.

(Title.)

Let the defendant ¹⁹, his agents, servants and workmen, be perpetually restrained from burning, or causing to be burnt, any bricks on the defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling-house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff.

No. 15.

INJUNCTION AGAINST BUILDING HIGHER THAN OLD LEVEL.

(Title.)

Let the defendant ¹⁹, his contractors, agents and workmen, be perpetually restrained from continuing to erect upon his premises in ¹⁹ any house or building of a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down, so or in such manner as to darken, injure or obstruct such of the plaintiff's windows in his said premises as are ancient lights.

No. 16.

INJUNCTION RESTRAINING USE OF PRIVATE ROAD.

(Title.)

Let the defendant ¹⁹, his agents, servants and workmen, be perpetually restrained from using or permitting to be used any part of the lane at ¹⁹, the soil of which belongs to the plaintiff, as a carriage-way for the passage of carts, carriages or other vehicles, either going to or from the land marked B in the annexed plan or for any purpose whatsoever.

No. 17.

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT.

(Title.)

It is ordered that the following accounts and inquiries be taken and made; that is to say:—

In creditor's suit—

- That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix D.—Decrees.)

In suits by legatees—

2. That an account be taken of the legacies given by the testator's will.

In suits by next-of-kin—

3. That an inquiry be made and account taken of what, or of what share, if any, the plaintiff is entitled to as next-of-kin [or one of the next-of-kin] of the intestate.

[After the first paragraph, the decree will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.

4. An account of the funeral and testamentary expenses.

5. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

6. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

7. And it is further ordered that the defendant do, on or before the day of next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.

8. And that if the * shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same be sold accordingly, and the proceeds paid into Court.

9. And that Mr. E. F. be receiver in the suit (or proceeding), and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the * (and shall give security by bond for the due performance of his duties to the amount of rupees).

10. And it is further ordered that if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say—

(a) an inquiry what immoveable property the deceased was seized of or entitled to at the time of his death;

(b) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased or any part thereof;

(c) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale herein-after directed.

11. And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent.

12. And it is ordered that G. H. shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the * and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

13. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the * shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the * to give the most useful publicity to such inquiries.

14. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of , and that the * do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of

15. And, lastly, it is ordered that this suit [or proceeding] stand adjourned for making final decree to the day of

[Such part only of this decree is to be used as is applicable to the particular case.]

No. 18.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE.

(Title.)

1. It is ordered that the defendant do, on or before the day of , pay into Court the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the estate of , the testator, and also the sum of Rs. for interest, at the rate of Rs. , per cent. per annum, from the day of to the day of , amounting together to the sum of Rs. .

2. Let the * of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered to be paid into Court as aforesaid, as follows:—

(a) The costs of the plaintiff to Mr. , his attorney [or pleader] or, and the costs of the defendant to Mr. , his attorney [or pleader].

(b) And (if any debts are due) with the residue of the said sum of Rs. after payment of the plaintiff's and defendant's costs as aforesaid, let the sums, found to be owing to the several creditors mentioned in the schedule to the certificate, of the * together with subsequent interest on such of the debts

* Here insert name of proper officer.

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix D.—Decrees.)

as bear interest, be paid ; and, after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them

3. And if there should then be any residue, let the same be paid to the residuary legatee.

No. 19.

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

(Title.)

1. It is declared that the defendant is personally liable to pay the legacy of Rs. bequeathed to the plaintiff ;
2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy ;
3. And it is also ordered that the defendant do, within weeks after the date of the certificate of the * pay to the plaintiff the amount of what the * shall certify to be due for principal and interest ;
4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

No. 20.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

(Title.)

1. Let the * of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the personal estate of E. F., the intestate, within one week after the taxation of the said costs by the said * and let the defendant retain for her own use out of such sum her costs, when taxed.
2. And it is ordered that the residue of the said sum of Rs. , after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows :—
 - (a) Let the defendant, within one week after the taxation of the said costs by the * as aforesaid, pay one-third share of the said residue to the plaintiffs A. B., and C. D., his wife, in her right as the sister and one of the next-of-kin of the said E. F., the intestate.
 - (b) Let the defendant retain for her own use one other third share of the said residue, as the mother and one of the next-of-kin of the said E. F., the intestate.
 - (c) And let the defendant, within one week after the taxation of the said costs by the * as aforesaid, pay the remaining one-third share of the said residue to G. H., as the brother and the other next-of-kin of the said E. F., the intestate.

No. 21.

PRELIMINARY DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNTS.

(Title.)

It is declared that the proportionate shares of the parties in the partnership are as follows :—

It is declared that this partnership shall stand dissolved [or shall be deemed to have been dissolved] as from the day of , and it is ordered that the dissolution thereof as from that day be advertised in the Gazette, etc.

And it is ordered that be the receiver of the partnership-estate and effects in this suit and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken :—

1. An account of the credits, property and effects now belonging to the said partnership ;

2. An account of the debts and liabilities of the said partnership ;

3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the * may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the day of , and that the * do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of

No. 22.

FINAL DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNTS.

(Title.)

It is ordered that the fund now in Court, amounting to the sum of Rs. , be applied as follows :—

1. In payment of the debts due by the partnership set forth in the certificate of the * amounting the whole to Rs. .

* Here insert name of proper officer.

*The Code of Civil Procedure 1908.**(The First Schedule.—Appendix D.—Decrees.)*

2. In payment of the costs of all parties in this suit, amounting to Rs.

[These costs must be ascertained before the decree is drawn up.]

3. In payment of the sum of Rs. to the plaintiff as his share of the partnership-assets, of the sum of Rs. being the residue of the said sum of Rs. now in Court, to the defendant as his share of the partnership-assets.

[Or, And that the remainder of the said sum of Rs. be paid to the said plaintiff [or defendant] in part payment of the sum of Rs. certified to be due to him in respect of the partnership-accounts.]

4. And that the defendant [or plaintiff] do on or before the day of pay to the plaintiff [or defendant] the sum of Rs. being the balance of the said sum of Rs. due to him, which will then remain due.

No. 23.

DECREE FOR RECOVERY OF LAND AND MESNE PROFITS.

(Title.)

It is hereby decreed as follows:—

(1) That the defendant do put the plaintiff in possession of the property specified in the schedule hereunto annexed.

(2) That the defendant do pay to the plaintiff the sum of Rs. with interest thereon at, the rate of per cent. per annum to the date of realization on account of mesne profits which have accrued due prior to the institution of the suit.

Or

(2) That an inquiry be made as to the amount of mesne profits which have accrued due prior to the institution of the suit.

(3) That an inquiry be made as to the amount of mesne profits from the institution of the suit until [the delivery of possession to the decree-holder] [the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court] [the expiration of three years from the date of the decree].

Schedule.

The Code of Civil Procedure 1908.

(The First Schedule.—Appendix E.—Execution.)

APPENDIX E.

EXECUTION.

No. 1.

NOTICE TO SHOW CAUSE WHY A PAYMENT OR ADJUSTMENT SHOULD NOT BE RECORDED AS CERTIFIED.
(O. 21, r. 2.)

(Title.)

To

WHEREAS in execution of the decree in the above-named suit
this Court that the sum of Rs. recoverable under the decree has been paid and should be
recorded as certified, this is to give you notice that you are to appear before this Court on the
day of 19, to show cause why the payment aforesaid should not be re-
corded as certified.

Given under my hand and the seal of the Court, this day of 19.

Judge.

No. 2.

PRECEPTE. (Section 46.)

(Title.)

UPON hearing the decree-holder it is ordered that this precept be sent to the Court of
at under section 46 of the Code of Civil Procedure, 1908, with directions to attach the
property specified in the annexed schedule and to hold the same pending any application which may be
made by the decree-holder for execution of the decree.

Schedule.

Dated the day of 19.

Judge.

No. 3.

ORDER SENDING DECREE FOR EXECUTION TO ANOTHER COURT. (O. 21, r. 6.)

(Title.)

WHEREAS the decree-holder in the above suit has applied to this Court for a certificate to be sent to
the Court of at for execution of the decree in the above
suit by the said Court, alleging that the judgment-debtor resides or has property within the local limits of
the jurisdiction of the said Court, and it is deemed necessary and proper to send a certificate to the said
Court under Order XXI, rule 6, of the Code of Civil Procedure, 1908, it is

Ordered:

That a copy of this order be sent to with a copy of the decree and of any
order which may have been made for execution of the same and a certificate of non-satisfaction.

Dated the day of 19.

Judge.

IV Q.

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix E.—Execution.)

No. 4.

CERTIFICATE OF NON-SATISFACTION OF DECREE. (O. 21, r. 6.)

(Title.)

Certified that no (1) satisfaction of the decree of this Court in Suit No. of 19, a copy which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.
 Dated the day of 19

Judge.

(1) If partial, strike out "no" and state to what extent.

No. 5.

CERTIFICATE OF EXECUTION OF DECREE TRANSFERRED TO ANOTHER COURT. (O. 21, r. 6.)

(Title.)

Number of suit and the Court by which the decree was passed.	Names of parties.	Date of application for execution.	Number of the execution case.	Process issued and dates of service thereof.	Costs of execution.	Amount realized.	How the case is disposed of.	Remarks.
1	2	3	4	5	6	7	8	9
					Rs. A. P.	Rs. A. P.		

Signature of Muharrir in charge.

Signature of Judge.

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix E.—Execution.)

No. 6.

APPLICATION FOR EXECUTION OF DECREE. (O. 21, r. 11.)

In the Court of

I, decree-holder, hereby apply for execution of the decree herein below set forth:—

No. of suit.	Names of parties.	Date of decree.	Whether any appeal preferred from decree.	Payment or adjustment made, if any.	Previous application, if any, with date and result.	Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross-decree.	Mode in which the assistance of the Court is required.
789 of 1897.	A. B.—Plaintiff. C. D.—Defendant.	October 11th, 1897.	No.	None.	Rs. 75-4 recorded on application, dated the 4th March, 1896.	Rs. 314-8-2 principal [interest at 6 per cent. per annum, from date of decree till payment].	[When attachment and sale of moveable property is sought.] I pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realized by attachment and sale of defendant's moveable property as per annexed list and paid to me. [When attachment and sale of immovable property is sought.] I pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution be realized by the attachment and sale of defendant's immovable property specified at the foot of this application and paid to me.

I declare that what is stated herein is true to the best of my knowledge and belief.

Signed

, Decree-holder.

Dated the day of 19

[When attachment and sale of immovable property is sought.]

Description and Specification of Property.

The undivided one-third share of the judgment-debtor in a house situated in the village of value Rs. 40 and bounded as follows:—

East by G's house; west by H's house; south by public road; north by private lane and J's house.

I declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

Signed

, Decree-holder.

IV Q 2

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix E.—Execution.)

No. 7.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE. (O. 21, r. 22.)

(Title.)

To

WHEREAS has made application to this Court for execution of decree in Suit No. of 19 on the allegation that the said decree has been transferred to him by assignment, this is to give you notice that you are to appear before this Court on the day of 19, to show cause why execution should not be granted.

Given under my hand and the seal of the Court, this

day of 19.

Judge.

No. 8.

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN EXECUTION OF A DECREE FOR MONEY.

(O. 21, r. 30.)

(Title.)

To

The Bailiff of the Court.

DECREE.				
Principal				
Interest				
Costs				
Costs of execution				
Further interest				
Total				

was ordered by decree of this Court passed on the day of 19, in Suit No. 19, to pay to the plaintiff the sum of Rs. as noted in the margin; and whereas the said sum of Rs. has not been paid; These are to command you to attach the moveable property of the said as set forth in the schedule hereunto annexed, or which shall be pointed out to you by the said and unless the said shall pay to you the said sum of Rs. together with Rs. the costs of this attachment, to hold the same until further orders from this Court.

You are further commanded to return this warrant on or before the day of 19, with an endorsement certifying the day on which and manner in which it has been executed, or why it has not been executed.

Given under my hand and the seal of the Court, this day of 19.

Judge.

No. 9.

WARRANT FOR SEIZURE OF SPECIFIC MOVEABLE PROPERTY ADJUDGED BY DECREE. (O. 21, r. 31.)

(Title.)

To

The Bailiff of the Court.

WHEREAS was ordered by decree of this Court passed on the day of 19, in Suit No. of 19, to deliver to the plaintiff the moveable property (or a share in the moveable property) specified in the schedule hereunto annexed, and whereas the said property (or share) has not been delivered;

These are to command you to seize the said moveable property (or a share of the said moveable property) and to deliver it to the plaintiff or to such person as he may appoint in his behalf.

Given under my hand and the seal of the Court, this day of 19.

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix E.—Execution.)

No. 10.

NOTICE TO STATE OBJECTIONS TO DRAFT OF DOCUMENT. (O. 21, r. 34.)

(Title.)

To

Take notice that on the day of 19, the decree-holder in the above suit presented an application to this Court that the Court may execute on your behalf a deed of , whereof a draft is hereunto annexed, of the immoveable property specified hereunder, and that the day of 19 is appointed for the hearing of the said application; and that you are at liberty to appear on the said day and to state in writing any objections to the said draft.

Description of Property.

Given under my hand and the seal of the Court, this day of 19 .

Judge.

No. 11.

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, ETC. (O. 21, r. 35.)

(Title.)

To

The Bailiff of the Court.

WHEREAS the undermentioned property in the occupancy of , the plaintiff in this suit; You are hereby directed to put the said in possession of the same, and you are hereby authorized to remove any person bound by the decree who may refuse to vacate the same.

Given under my hand and the seal of the Court, this day of 19 .

*Schedule.**Judge.*

No. 12.

NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE. (O. 21, r. 37.)

(Title.)

To

WHEREAS application to this Court for execution of decree in suit No. of 19 by arrest and imprisonment of your person, you are hereby required to appear before this Court on the day of 19, to show cause why you should not be committed to the civil prison in execution of the said decree.

Given under my hand and the seal of the Court, this day of 19 .

Judge.

No. 13.

WARRANT OF ARREST IN EXECUTION. (O. 21, r. 38.)

(Title.)

To

The Bailiff of the Court.

WHEREAS

No. of 19 , dated the

Principal	Interest	Costs	Execution	Total

was adjudged by a decree of the Court in Suit day of 19 , to pay to the decree-holder the sum of Rs. as noted in the margin and whereas the said sum of Rs. has not been paid to the said decree-holder in satisfaction of the said decree, these are to command you to arrest the said judgment-debtor and unless the said judgment-debtor shall pay to you the said sum of Rs. , together with Rs. for the costs of executing this process, to bring the said defendant before the Court with all convenient speed. You are further commanded to return this warrant on or before the day of

The Code of Civil Procedure 1908.

(The First Schedule.—Appendix E.—Execution.)

19, with an endorsement certifying the day on which and manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and the seal of the Court, this day of

19.

Judge.

No. 14.

WARRANT OF COMMITTAL OF JUDGMENT-DEBTOR TO JAIL. (O. 21, r. 40.)
(Title.)

To The Officer in charge of the Jail at

WHEREAS been brought before this Court this day of 19, under a warrant in execution of a decree which was made and pronounced by the said Court on the day of 19, and by which decree it was ordered that the said should pay ; And whereas the said has not obeyed the decree, nor satisfied the Court that he is entitled to be discharged from custody ; You are hereby, in the name of the King-Emperor of India, commanded and required to take and receive the said into the civil prison and keep him imprisoned therein for a period not exceeding or until the said decree shall be fully satisfied, or the said shall be otherwise entitled to be released according to the terms and provisions of section 58 of the Code of Civil Procedure, 1908 ; and the Court does hereby fix annas per diem as the rate of the monthly allowance for the subsistence of the said during his confinement under this warrant of committal.

Given under my signature and the seal of this Court, this day of

19.

Judge.

No. 15.

ORDER FOR THE RELEASE OF A PERSON IMPRISONED IN EXECUTION OF A DECREE. (Sections 58, 59.)
(Title.)

To

The Officer in charge of the Jail at

Under orders passed this day, you are hereby directed to set free judgment-debtor now in your custody.

Dated

Judge.

No. 16.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF. (O. 21, r. 46.)

(Title.)

To

WHEREAS has failed to satisfy a decree passed against 19 in Suit No. of 19, in favour of on the day of for Rs. ; It is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from the following property in the possession of the said , that is to say, , to which the defendant is entitled, subject to any claim of the said , and the said is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person or persons whomsoever.

*The Code of Civil Procedure 1908.**(The First Schedule.—Appendix E.—Execution.)*

No. 20.

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT. (O. 21, r. 51.)
(Title.)

To

The Bailiff of the Court.

WHEREAS an order has been passed by this Court on the
 19 for the attachment of
 You are hereby directed to seize the said and bring the same into Court.
 GIVEN under my hand and the seal of the Court, this day of

day of

19

Judge.

No. 21.

ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT. (O. 21, r. 52.)
(Title.)

To

Sir,

The plaintiff having applied, under rule 22 of Order XXI of the Code of Civil Procedure, 1908, for an attachment of certain money now in your hands (here state, how the money is supposed to be in the hands of the person addressed, on what account, etc.), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,

Sir,

Your most obedient Servant,

Dated the

day of

19

Judge.

No. 22.

NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED IT. (O. 21, r. 53.)
(Title.)

To

The Judge of the Court of

Sir,

I have the honour to inform you that the decree obtained in your Court on the
 of 19, by
 which he was and in Suit No. of 19, in
 was has been attached by this Court on the application of the in the suit specified above. You are therefore requested to stay the execution of the decree of your Court until you receive an intimation from this Court that the present notice has been cancelled or until execution of the said decree is applied for by the holder of the decree now sought to be executed or by his judgment-debtor.

I have the honour, etc.,

Date the day of

19

Judge.

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix E.—Execution.)

No. 23.

NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE DECREE. (O. 21, r. 53.)

(Title.)

To

WHEREAS an application has been made in this Court by the decree-holder in the above suit for the attachment of a decree obtained by you on the day of 19th, in the Court of _____ in Suit No. _____ of 19th, in which was _____ and was _____; It is ordered that you, the said _____, be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the same in any way.

GIVEN under my hand and the seal of the Court, this day of 19th.

Judge.

No. 24.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY. (O. 21, r. 54.)

(Title.)

To

Defendant.

WHEREAS you have failed to satisfy a decree passed against you on the day of 19th, in Suit No. _____ of 19th, in favour of _____, for Rs. _____; It is ordered that you, the said _____, be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

GIVEN under my hand and the seal of the Court, this day of 19th.

Schedule.

Judge.

No. 25.

ORDER FOR PAYMENT TO THE PLAINTIFF, ETC., OF MONEY, ETC., IN THE HANDS OF A THIRD PARTY. (O. 21, r. 56.)

(Title.)

To

WHEREAS the following property, decree in Suit No. _____ of 19th, passed on the day of 19th, in favour of _____, for Rs. _____, consisting of Rs. _____ in money and Rs. _____, has been attached in execution of a day of 19th; It is ordered that the property so attached, in currency-notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you, the said _____, to _____.

GIVEN under my hand and the seal of the Court, this day of 19th.

Judge.

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The Code of Civil Procedure 1908.
(The First Schedule.—Appendix E.—Execution.)

No. 26.

NOTICE TO ATTACHING CREDITOR. (O. 21, r. 58.)
(Title.)

To
 WHEREAS attachment: on No. of 19 day of 19, this is to give you notice to appear before this Court on 19, either in person or by a pleader of the Court duly instructed to support your claim, as attaching creditor.

Given under my hand and the seal of the Court, this day of 19.

Judge.

No. 27.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY. (O. 21, r. 66.)
(Title.)

To The Bailiff of the Court.
 THESE are to command you to sell by auction, after giving previous notice, by affixing the same in this Court-house, and after making due proclamation, the property attached under a warrant from this Court, dated the 19, in execution of a decree in favour of in Suit No. of 19, or so much of the said property as shall realize the sum of Rs. of the said decree and costs still remaining unsatisfied.
 You are further commanded to return this warrant on or before the 19, with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and the seal of the Court, this day of 19.

Judge.

No. 28.

NOTICE OF THE DAY FIXED FOR SETTLING A SALE PROCLAMATION. (O. 21, r. 66.)
(Title.)

To Judgment-debtor.
 WHEREAS in the above-named suit applied for the sale of that the day of settling the terms of the proclamation of sale.
 Given under my hand and the seal of the Court, this day of 19.

the decree-holder has ; You are hereby informed has been fixed for

Judge.

No. 29.

PROCLAMATION OF SALE. (O. 21, r. 66.)
(Title.)

Notice is hereby given that, under rule 64 of Order XXI of the Code of Civil Procedure, 1908, an order has been passed by this Court for the sale of the attached property mentioned in the annexed schedule, in Suit No. of 19, decided by the of which was plaintiff and was defendant.

in which interest up to date of sale to the sum of

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix E.—Execution.)

The sale will be by public auction, and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the judgment-debtors above-named as mentioned in the schedule below; and the liabilities and claims attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot.

In the absence of any order of postponement, the sale will be held by at the monthly sale commencing at

o'clock on the

In the event, however, of the debt above specified and of the costs of the sale being tendered or paid before the knocking down of any lot, the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly authorized agent. No bid by, or on behalf of, the judgment-creditors above-mentioned, however, will be accepted, nor will any sale to them be valid without the express permission of the Court previously given. The following are the further

Conditions of Sale.

1. The particulars specified in the schedule below have been stated to the best of the information of the Court, but the Court will not be answerable for any error, mis-statement or omission in this proclamation.

2. The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court or officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of rule 69 of Order XXI.

5. In the case of moveable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and re-sold.

6. In the case of immoveable property, the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25 per cent. on the amount of his purchase-money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and re-sold.

7. The full amount of the purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase-money within the period allowed, the property shall be re-sold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the sale, may, if the Court thinks fit, be forfeited to Government and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

Given under my hand and the seal of the Court, this

day of

19

Judge.

Schedule of Property.

Number of lot.	Description of property to be sold, with the name of each owner where there are more judgment-debtors than one.	The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government.	Detail of any incumbrances to which the property is liable.	Claims, if any, which have been put forward to the property, and any other known particulars bearing on its nature and value.

No. 30.

ORDER ON THE NAZIR FOR CAUSING SERVICE OF PROCLAMATION OF SALR. (O. 21, r. 66.)
 (Title.)

To

The Nazir of the Court.

WHEREAS an order has been made for the sale of the property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the day of 19 has

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*The Code of Civil Procedure 1908.
(The First Schedule.—Appendix E.—Execution.)*

been fixed for the sale of the said property, copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on the court-house, and then to submit to this Court a report showing the dates on which and the manner in which the proclamations have been published.

Dated the

day of

19 .

SCHEDULE.

Judge. .

No. 31.

CERTIFICATE BY OFFICER HOLDING A SALE OF THE DEFICIENCY OF PRICE ON A RE-SALE OF PROPERTY BY REASON OF THE PURCHASER'S DEFAULT. (O. 21, r. 71.)

(Title.)

Certified that at the re-sale of the property in execution of the decree in the above-named suit, in consequence of default on the part of purchaser, there was a deficiency in the price of the said property amounting to Rs. and that the expenses attending such re-sale amounted to Rs. , making a total of Rs. , which sum is recoverable from the defaulter.

Dated the

day of

19 .

Officer holding the sale.

No. 32.

NOTICE TO PERSON IN POSSESSION OF MOVEABLE PROPERTY SOLD IN EXECUTION. (O. 21, r. 79.)

(Title.)

To

WHEREAS has become the purchaser at a public sale in execution of the decree in the above suit of now in your possession, you are hereby prohibited from delivering possession of the said to any person except the said Given under my hand and the seal of the Court, this

day of

19 .

Judge. .

No. 33.

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE PURCHASER. (O. 21, r. 79.)

(Title.)

To

and to

WHEREAS has become the purchaser at a public sale in execution of the decree in the above suit of being debts due from you to you

It is ordered that you are hereby prohibited from receiving, and you said debt to any person or persons except the said

Given under my hand and the seal of the Court, this

be, and you from making payment of, the

day of

19 .

Judge. .

*The Code of Civil Procedure 1908.**(The First Schedule.—Appendix E.—Execution.)*

No. 34.

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION. (O. 21, r. 79.)
(Title.)

To and , Secretary of Corporation.
 WHEREAS has become the purchaser at a public sale in execution of the decree, in the above suit, of certain shares in the above Corporation, that is to say, of standing in the name of you ; It is ordered that you be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said , the purchaser aforesaid, or from receiving any dividends thereon and you Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except the said , the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 35.

CERTIFICATE TO JUDGMENT-DEBTOR AUTHORIZING HIM TO MORTGAGE, LEASE OR SELL PROPERTY.

(O. 21, r. 83.)

(Title.)

WHEREAS in execution of the decree passed in the above suit an order was made on the day of 19 for the sale of the under-mentioned property of the judgment-debtor , and whereas the Court has, on the application of the said judgment-debtor, postponed the said sale to enable him to raise the amount of the decree by mortgage, lease or private sale of the said property or of some part thereof :

This is to certify that the Court doth hereby authorize the said judgment-debtor to make the proposed mortgage, lease or sale within a period of from the date of this certificate ; provided that all monies payable under such mortgage, lease or sale shall be paid into this Court and not to the said judgment-debtor.

Description of property.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 36.

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE. (O. 21, rr. 90, 92.)

(Title.)

To
 WHEREAS the under-mentioned property was sold on the day of 19 the decree-
 in execution of the decree passed in the above-named suit, and whereas holder [or judgment-debtor] has applied to this Court to set aside the sale of the said property on the ground of a material irregularity [or fraud] in publishing [or conducting] the sale, namely, that

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the day of 19 , when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this day of 19 .

Description of property.

Judge.

*The Code of Civil Procedure 1908.
(The First Schedule.—Appendix E.—Execution.)*

No. 37.

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE (O. 21, RT. 91, 92.)
(Title.)

To

WHEREAS under-mentioned property sold on the day of 19, in execution of the decree passed in the above-named suit, has applied to this Court to set aside the sale of the said property on the ground that the judgment-debtor, had no saleable interest therein:

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the day of 19 when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this day of

Description of property.

19

Judge.

No. 38.

CERTIFICATE OF SALE OF LAND. (O. 21, R. 94.)

(Title.)

This is to certify that sale by public auction on the day of

has been declared the purchaser at a 19 of in execution of decree in this suit, and

that the said sale has been duly confirmed by this Court.

day of 19

GIVEN under my hand and the seal of the Court, this

Judge.

No. 39.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION. (O. 21, R. 95.)

To

The Bailiff of the Court.

WHEREAS at a sale in execution of decree in Suit No. of 19; You are hereby ordered to put the said , the certified purchaser, as aforesaid, in possession of the same.

GIVEN under my hand and the seal of the Court, this day of

19

Judge.

No. 40.

SUMMONS TO APPEAR AND ANSWER CHARGE OF OBSTRUCTING EXECUTION OF DECREE. (O. 21, R. 97.)

(Title.)

To

WHEREAS above suit, has complained to this Court that you have resisted (or obstructed) the officer charged with the execution of the warrant for possession:

You are hereby summoned to appear in this Court on the day of 19 at A.M., to answer the said complaint.

GIVEN under my hand and the seal of the Court, this day of

19

Judge.

*The Code of Civil Procedure 1908.**(The First Schedule.—Appendix E.—Execution.)*

No. 41.

WARRANT OF COMMITTAL. (O. 21, r. 98.)

(Title.)

To

The Officer in Charge of the Jail at

WHEREAS the undermentioned property has been decreed to , the plaintiff in this suit, and whereas the Court is satisfied that without any just cause resisted [or obstructed] and is still resisting [or obstructing] the said in obtaining possession of the property, and whereas the said has made application to this Court that the said be committed to the civil prison ;

You are hereby commanded and required to take and receive the said into the civil prison and to keep him imprisoned therein for the period of days.

Given under my hand and the seal of the Court, this day of

19

Judge.

No. 42.

AUTHORITY OF THE COLLECTOR TO STAY PUBLIC SALE OF LAND. (Section 72.)

(Title.)

To

Collector of

SIR, In answer to your communication No. , dated , representing that the sale in execution of the decree in this suit of land situate within your district is objectionable, I have the honour to inform you that you are authorized to make provision for the satisfaction of the said decree in the manner recommended by you.

I have the honour to be,

SIR,
Your obedient Servant,

Judge.

The Code of Civil Procedure 1908.

(The First Schedule.—Appendix F.—Supplemental Proceedings.)

APPENDIX F.
SUPPLEMENTAL PROCEEDINGS.

No. 1.

WARRANT OF ARREST BEFORE JUDGMENT. (O. 38, r. 1.)

(Title.)

To

The Bailiff of the Court.

WHEREAS, the plaintiff in the above suit, claims the sum of Rs. as noted in the margin and has proved to the satisfaction of the Court that there is probable cause for believing that the defendant is about to

Principal	:	:	:	:	
Interest	:	:	:	:	
Costs	:	:	:	:	
TOTAL					

These are to command you to demand and receive from the said the sum of Rs. as sufficient to satisfy the plaintiff's claim, and unless the said sum of Rs. is forthwith delivered to you by or on behalf of the said to take

the said into custody, and to bring him before this Court, in order that he may show cause why he should not furnish security to the amount of Rs. for his personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until satisfaction of any decree that may be passed against him in the suit.

Given under my hand and the seal of the Court, this day of 19

Judge.

No. 2.

SECURITY FOR APPEARANCE OF A DEFENDANT ARRESTED BEFORE JUDGMENT. (O. 38, r. 2.)

(Title.)

WHEREAS at the instance of the defendant, has been arrested and brought before the Court; And whereas on the failure of the said defendant to show cause why he should not furnish security for his appearance, the Court has ordered him to furnish such security:

Therefore I have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall appear at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the said suit; and in default of such appearance I bind myself, my heirs and executors, to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said suit.

Witness my hand at this day of 19

Witnesses.

(Signed.)

1.

2.

No. 3.

SUMMONS TO DEFENDANT TO APPEAR ON SURETY'S APPLICATION FOR DISCHARGE. (O. 38, r. 3.)

(Title.)

To

WHEREAS who became surety on the day of 19 for your appearance in the above suit, has applied to this Court to be discharged from his obligation:

You are hereby summoned to appear in this Court in person on the day of 19, at A.M., when the said application will be heard and determined.

Given under my hand and the seal of the Court, this day of 19

Judge.

IVS

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix F.—Supplemental Proceedings.)

No. 4.

ORDER FOR COMMITTAL. (O. 38, r. 4.)
 (Title.)

To

WHEREAS plaintiff in this suit, has made application to the Court that security be taken for the appearance of the defendant, to answer any judgment that may be passed against him in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he has failed to do; It is ordered that the said defendant be committed to the civil prison until the decision of the suit; or, if judgment be pronounced against him, until satisfaction of the decree.

Given under my hand and the seal of the Court, this day of 19

Judge.

No. 5.

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE. (O. 38, r. 5.)

(Title.)

To

The Bailiff of the Court.

WHEREAS the defendant in the above suit has proved to the satisfaction of the Court that These are to command you to call upon the said defendant on or before the day of either to furnish security for the sum of rupees 19 to produce and place at the disposal of this Court when required or the value thereof, or such portion of the value as may be sufficient to satisfy any decree that may be passed against him; or to appear and show cause why he should not furnish security; and you are further ordered to attach the said and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the day of 19 with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and the seal of the Court, this day of 19

Judge.

No. 6.

SECURITY FOR THE PRODUCTION OF PROPERTY. (O. 38, r. 5.)
 (Title.)

WHEREAS at the instance of the plaintiff in the above suit, the defendant, has been directed by the Court to furnish security in the sum of Rs. to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed;

Therefore I have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall produce and place at the disposal of the Court, when required, the property specified in the said schedule, or the value of the same, or such portion thereof as may be sufficient to satisfy the decree; and in default of his so doing, I bind myself, my heirs and executors, to pay to the said Court, at its order, the said sum of Rs. or such sum not exceeding the said sum as the said Court may adjudge.

Schedule.

Witness my hand at this day of 19

(Signed.)

Witnesses.

1.

2.

The Code of Civil Procedure 1908.

(The First Schedule.—Appendix F.—Supplemental Proceedings.)

No. 7.

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH SECURITY. (O. 38, r. 6.)

(Title.)

To

The Bailiff of the Court.

WHEREAS, the plaintiff in this suit, has applied to the Court to call upon the defendant, to furnish security to fulfil any decree that may be passed against him in the suit, and whereas the Court has called upon the said to furnish such security, which he has failed to do; These are to command you to attach the property of the said and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the day of with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and the seal of the Court, this

day of

19

Judge.

No. 8.

TEMPORARY INJUNCTIONS. (O. 39, r. 1.)

(Title.)

Upon motion made unto this Court by A. B., and upon reading the petition of the said plaintiff in this matter filed [this day] [or the plaint filed in this suit on the day of] , or the written statement of the said plaintiff filed on the day of] and upon hearing the evidence of [in support thereof [if after notice and defendant not appearing: add, and also the evidence of upon the defendant C. D.]. This Court doth order that an injunction be awarded to restrain the defendant C. D., his servants, agents and workmen, from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [or, in the written statement, or petition, of the plaintiff and evidence at the hearing of this motion mentioned] being No. 9, Oilmongers Street, Hindupur, in the Taluk of , and from selling the materials whereof the said house is composed, until the hearing of this suit or until the further order of this Court.

Dated this

day of

19

Judge.

[Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus:—] to restrain the defendants and from parting with out of the custody of them or any of them or endorsing, assigning or negotiating the promissory note [or bill of exchange] in question, dated on or about the , etc., mentioned in the plaintiff's plaint [or petition] and the evidence heard at this motion until the hearing of this suit, or until the further order of this Court.

[In Copyright cases] to restrain the defendant C. D., his servants, agents or workmen, from printing, publishing or vending a book, called , or any part thereof, until the, etc.

[Where part only of a book is to be restrained] to restrain the defendant C. D., his servants, agents or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [or petition and evidence, etc.] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled and also that part which is entitled [or which is contained in page to page both inclusive] until , etc.

[In Patent cases] to restrain the defendant C. D., his servants, agents and workmen, from making or vending any perforated bricks [or as the case may be] upon the principle of the inventions in the plaintiff's plaint [or petition, etc., or written statement, etc.,] mentioned, belonging to the plaintiff, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [or as the case may be] mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, etc.

[In cases of Trade marks] to restrain the defendant C. D., his servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [or as the case may be] described as or purporting to be blacking manufactured by the plaintiff A. B., in bottles having affixed thereto such labels as in the plaintiff's plaint [or petition, etc.,] mentioned, or any other labels so contrived or expressed as, by colourable imitation or

*The Code of Civil Procedure 1908.**(The First Schedule.—Appendix F.—Supplemental Proceedings.)*

otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff A. B., and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff A. B., until the, etc.

[To restrain a partner from in any way interfering in the business]

to restrain the defendant C. D., his servants and agents, from entering into any contract, and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security in the name of the partnership-firm of B. and D., and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of B. and D., or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking until the, etc.

No. 6.

APPOINTMENT OF A RECEIVER. (O. 40, r. 1.)

(Title.)

To

WHEREAS in the above suit on the day of 19 , in favour of ; You are hereby (subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XL of the Code of Civil Procedure, 1908, with full powers under the provisions of that Order.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on per cent. upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 7.

BOND TO BE GIVEN BY RECEIVER. (O. 40, r. 3.)

(Title.)

Know all men by these presents, that we and are jointly and severally bound to of the Court of and in Rs. to be paid to the said or his successor in office for the time being. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this day of 19 .

Whereas a plaint has been filed in this Court by for the purpose of [here insert the object of suit]. against

And whereas the said has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immoveable property and to get in the outstanding moveable property of in the said plaint named :

Now the condition of this obligation is such, that if the above-boun- den shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immoveable property, and in respect of the moveable property, of the said at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

Signed and delivered by the above-boun- den in the presence of

Note.—If deposit of money is made, the memorandum thereof should follow the terms of the condition of the bond.

The Code of Civil Procedure 1908.
 (The First Schedule.—Appendix G.—Appeal, Reference and Review.)

APPENDIX G.
 APPEAL, REFERENCE AND REVIEW.

No. 1.

MEMORANDUM OF APPEAL. (O. 41, r. 1.)

(Title.)

The

Court at

in Suit No. of 19, dated the
 19, and sets forth the following grounds of objection to the
 decree appealed from, namely :—

above-named appeals to the
 from the decree of

No. 2.

SECURITY BOND TO BE GIVEN ON ORDER BEING MADE TO STAY EXECUTION OF DECREE. (O. 41, r. 5.)

(Title.)

To

This security bond on stay of execution of decree executed by
 That , the plaintiff in Suit No. of 19, having sued
 , the defendant, in this Court and a decree having been passed on the day of 19
 in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in
 the Court, the said appeal is still pending.

witnesseth :—

Now the plaintiff decree-holder having applied to execute the decree, the defendant has made an application praying for stay of execution and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs. , mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be confirmed or varied by the Appellate Court the said defendant shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this day of 19

Schedule.

(Signed)

Witnessed by

1.

2.

No. 3.

SECURITY BOND TO BE GIVEN DURING THE PENDENCY OF APPEAL. (O. 41, r. 6.)

(Title.)

To

This security bond on stay of execution of decree executed by
 That , the plaintiff in Suit No. of 19, having sued , the
 defendant, in this Court and a decree having been passed on the day of
 19 in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in
 the Court, the said appeal is still pending.

witnesseth :—

Now the plaintiff decree-holder has applied for execution of the said decree and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs. , mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be reversed or varied by the Appellate Court, the plaintiff shall restore any property which may be or has been taken in execution of the said decree and shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this day of 19

Schedule.

(Signed)

Witnessed by

1.

2.

No. 4.

SECURITY FOR COSTS OF APPEAL. (O. 41, r. 10.)

(Title.)

To

This security bond for costs of appeal executed by
 This appellant has preferred an appeal from the decree in Suit No. of 19, against the
 respondent, and has been called upon to furnish security. Accordingly I, of my own free will, stand security for the costs of the appeal, mortgaging the properties specified in the schedule hereunto

witnesseth :—

*The Code of Civil Procedure 1908.**(The First Schedule.—Appendix G.—Appeal, Reference and Review.)*

annexed. I shall not transfer the said properties or any part thereof, and in the event of any default on the part of the appellant I shall duly carry out any order that may be made against me with regard to payment of the costs of appeal. Any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this day of 19

Schedule.

Witnessed by

1.

2.

(Signed)

No. 5.

INTIMATION TO LOWER COURT OF ADMISSION OF APPEAL. (O. 41, r. 13.)

(Title.)

To

You are hereby directed to take notice that the above suit, has preferred an appeal to this Court from the decree passed by you therein on the day of 19

You are requested to send with all practicable despatch all material papers in the suit.

Dated the day of 19

Judge.

No. 6.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL. (O. 41, r. 14.)

(Title.)

APPEAL from the dated the

day of

of the Court of

19

To

Respondent.

TAKE notice that an appeal from the decree of been presented by and that the day of

in this case has and registered in this Court, 19 has been fixed by this

Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorized to act for you in this appeal, it will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court, this

day of

19

Judge.

[Note.—If a stay of execution has been ordered, intimation should be given of the fact on this notice.]

No. 7.

NOTICE TO A PARTY TO A SUIT NOT MADE A PARTY TO THE APPEAL BUT JOINED BY THE COURT AS A RESPONDENT. (O. 41, r. 20.)

(Title.)

WHEREAS you were a party in suit No. , and whereas the this Court from the decree passed against him in the said suit and it appears to this Court that you are interested in the result of the said appeal:

*The Code of Civil Procedure 1908.**(The First Schedule.—Appendix G.—Appeal, Reference and Review.)*

This is to give you notice that this Court has directed you to be made a respondent in the said appeal and has adjourned the hearing thereof till the ^{day of} ~~19~~ ¹⁹ A.M. If no appearance is made on your behalf on the said day and at the said hour, the appeal will be heard and decided in your absence. Given under my hand and the seal of the Court, this ^{day of} ~~19~~ ¹⁹

Judge.

No. 8.

MEMORANDUM OF CROSS OBJECTION. (O. 41, r. 22.)

(Title.)

WHEREAS the Court at ^{has preferred an appeal to the} ~~19~~ ^{day of} ¹⁹ ^{in Suit No.} ^{from the decree of} ¹⁹ ^{and whereas notice of the day} ¹⁹ ^{on the} ^{day of} ¹⁹ ^{files this memorandum of cross objection under rule 22 of Order XLI of} ^{fixed for hearing the appeal was served on the} ¹⁹ ^{the Code of Civil Procedure, 1908, and sets forth the following grounds of objection to the decree appealed from, namely:—}

No. 9.

DECREE IN APPEAL. (O. 41, r. 35.)

(Title.)

Appeal No. ^{of 19} ^{from the decree of the Court of} ¹⁹ ^{dated the} ^{day of}

Memorandum of Appeal.

*Plaintiff.
Defendant.*

The ^{above-named appeals to the} ^{in the above suit, dated the} ¹⁹ ^{from the decree of} ¹⁹ ^{for the following reasons, namely:—}

Court at ¹⁹ ^{day of}

This appeal coming on for hearing on the ¹⁹ ^{day of} ¹⁹ ^{for the appellant and of} ^{before} ^{in the presence of} ¹⁹ ^{for} the respondent, it is ordered—

The costs of this appeal, as detailed below, amounting to Rs. ¹⁹ ¹⁹, are to be paid by
The costs of the original suit are to be paid by

Given under my hand this ¹⁹ ^{day of}*Judge.*

Costs of Appeal.

Appellant.	Amount.			Respondent.	Amount.		
	Rs.	a.	p.		Rs.	a.	p.
1. Stamp for memorandum of appeal.				Stamp for power			
2. Do. for power				Do. for petition			
3. Service of processes				Service of processes			
4. Pleader's fee on Rs.				Pleader's fee on Rs			
Total				Total			

*The Code of Civil Procedure 1908.**(The First Schedule.—Appendix G.—Appeal, Reference and Review.)*

No. 10.

APPLICATION TO APPEAL IN FORMA PAUPERIS. (O. 44, r. 1.)

(Title.)

I the above-named, present the accompanying memorandum of appeal from the decree in the above suit and apply to be allowed to appeal as a pauper.

Annexed is a full and true schedule of all the moveable and immoveable property belonging to me with the estimated value thereof.

Dated the

day of

19

(Signed.)

Note.—Where the application is by the plaintiff he should state whether he applied and was allowed to sue in the Court of first instance as a pauper.

No. 11.

NOTICE OF APPEAL IN FORMA PAUPERIS. (O. 44, r. 1.)

(Title.)

WHEREAS the above-named has applied to be allowed to appeal as a pauper from the decree in the above suit dated the day of 19 and whereas the day of 19 has been fixed for hearing the application, notice is hereby given to you that if you desire to show cause why the applicant should not be allowed to appeal as a pauper an opportunity will be given to you of doing so on the afore-mentioned date.

Given under my hand and the seal of the Court, this

day of

19

Judge.

No. 12.

NOTICE TO SHOW CAUSE WHY A CERTIFICATE OF APPEAL TO THE KING IN COUNCIL SHOULD NOT BE GRANTED. (O. 45, r. 3.)

(Title.)

To

TAKE notice that has applied to this Court for a certificate that as regards amount or value and nature the above case fulfills the requirements of section 110 of the Code of Civil Procedure, 1908, or that it is otherwise a fit one for appeal to His Majesty in Council.

The day of 19 is fixed for you to show cause why the Court should not grant the certificate asked for.

Given under my hand and the seal of the Court, this

day of

19

Registrar.

No. 13.

NOTICE TO RESPONDENT OF ADMISSION OF APPEAL TO THE KING IN COUNCIL. (O. 45, r. 8.)

(Title.)

To

WHEREAS in the above case, has furnished the security and made the deposit required by Order XLV, rule 7, of the Code of Civil Procedure, 1908:

Take notice that the appeal of the said to His Majesty in Council has been admitted on the day of 19.

Given under my hand and the seal of the Court, this

day of

19

Registrar.

No. 14.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED. (O. 47, r. 4.)

(Title.)

To

TAKE notice that has applied to this Court for a review of its decree passed on the day of 19 in the above case. The is fixed for you to show cause why the Court should not grant a review of its decree in this case.

Given under my hand and the seal of the Court, this

day of

19

Judge.

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix H.—Miscellaneous.)

APPENDIX H.

MISCELLANEOUS.

No. 1.

AGREEMENT OF PARTIES AS TO ISSUES TO BE TRIED. (O. 14, r. 6.)

(Title.)

WHEREAS we, the parties in the above suit, are agreed as to the question of fact [or of law] to be decided between us and the point at issue between us is whether a claim founded on a bond, dated the day of 19 and filed as Exhibit in the said suit, is or is not beyond the statute of limitation (or state the point at issue whatever it may be): We therefore severally bind ourselves that, upon the finding of the Court in the negative [or affirmative] of such issue will pay to the said Rupees (or such sum as the Court shall hold to be due thereon) and I, the said will accept the said sum of Rupees (or such sum as the Court shall hold to be due) in full satisfaction of my claim on the bond aforesaid [or, that upon such finding I, the said will do or abstain from doing, etc., etc.].

Plaintiff.

Defendant.

Witnesses.

1.

2.

Dated the

day of

19

No. 2.

NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO ANOTHER COURT FOR TRIAL. (SECTION 24.)

In the Court of the District Judge of

No.

of 19

To

WHEREAS an application dated the to this Court by the 19 now pending in the Court of the which is plaintiff and of the suit for trial to the Court of the

day of

19 in Suit No.

has been made

at of in is defendant, for the transfer

You are hereby informed that the day of 19 has been fixed for the hearing of the application, when you will be heard if you desire to offer any objection to it.

Given under my hand and the seal of the Court, this day of 19.

Judge

No. 3.

NOTICE OF PAYMENT INTO COURT. (O. 24, r. 2.)

(Title.)

Take notice that the defendant has paid into Court Rs. and says that that sum is sufficient to satisfy the plaintiff's claim in full.

X Y, Pleader for the defendant.

To Z, Pleader for the plaintiff.

No. 4.

NOTICE TO SHOW CAUSE. (GENERAL FORM.)

(Title.)

To

WHEREAS the above-named has made application to this Court that You are hereby warned to appear in this Court in person or by a pleader duly instructed on the day of 19, at o'clock in the forenoon, to show cause against the application, failing wherein, the said application will be heard and determined *ex parte*.

IV T

*The Code of Civil Procedure, 1908.**The First Schedule.—Appendix H.—Miscellaneous.)*

Given under my hand and the seal of the Court, this
19

day of

Judge.

No. 5.

LIST OF DOCUMENTS PRODUCED BY PLAINTIFF
DEFENDANT (O. 13, r. 1.)
(Title.)

No.	Description of document.	Date, if any, which the document bears.	Signature of party or pleader.
1	2	3	4

No. 6.

NOTICE TO PARTIES OF THE DAY FIXED FOR EXAMINATION OF A WITNESS ABOUT TO LEAVE THE JURISDICTION. (O. 18, r. 16.)

(Title.)

To

WHEREAS in the above suit application has been made to the Court by plaintiff (or defendant).
the examination of that
by the said , a witness required
immediately; and it has been shown to the Court's satisfaction that the said witness is about to leave
the Court's jurisdiction (or any other good and sufficient cause, to be stated):

Take notice that the examination of the said witness will be
taken by the Court on the day of
Dated the day of 19

Judge.

No. 7.

COMMISSION TO EXAMINE ABSENT WITNESSES. (O. 26, rr. 4, 18.)

(Title.)

To
WHEREAS the evidence of is required by the
in the above suit; and whereas ; you are
requested to take the evidence on interrogatories (or *viva voce*) of such witness ; you are
and you are hereby appointed Commissioner for that purpose. The evidence will be taken in the presence

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix H.—Miscellaneous.)

of the parties or their agents if in attendance, who will be at liberty to question the witness on the points specified; and you are further requested to make return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application.

A sum of Rs. , being your fee in the above, is herewith forwarded.

Given under my hand and the seal of the Court, this day of

19 .

Judge.

No. 8.

LETTER OF REQUEST. (O. 26, r. 5.)

(Title.)

(Heading:—To the President and Judges of, etc., etc., or as the case may be.)

WHEREAS a suit is now pending in the in which A. B. is plaintiff and C. D. is defendant; And in the said suit the plaintiff claims

(abstract of claim) :

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

E. F., of
G. H., of
I. J., of

and

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court;

Now I , as the of the said Court, have the honour to request, and do hereby, request, that for the reasons aforesaid and for the assistance of the said Court, you, as the President and Judges of the said , or some one or more of you, will be pleased to summon the said witness (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (or *vide voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses to the said Court.

(Note.—If the Request is directed to a Foreign Court, the words "through His Majesty's Secretary of State for Foreign Affairs for transmission" should be inserted after the words "other witnesses" in the penultimate line of this form.)

No. 9.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS. (O. 26, rr. 9, 11.)

(Title.)

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for should be issued; You are hereby appointed Commissioner for the purpose of

Process to compel the attendance before you of any witnesses or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. , being your fee in the above, is herewith forwarded

Given under my hand and the seal of the Court this day of

19 .

Judge.

IV T 2

The Code of Civil Procedure 1908.
(The First Schedule.—Appendix H.—Miscellaneous.)

No. 13.

NOTICE TO SURETY OF HIS LIABILITY UNDER A DECRET. (Section 145.)
(Title.)

To

WHEREAS you did on become liable as surety for the performance of any decree which might be passed against the said defendant in the above suit ; and whereas a decree was passed on the day of ¹⁹ against the said defendant for the payment of , and whereas application has been made for execution of the said decree against you :

Take notice that you are hereby required on or before the ¹⁹ day of to show cause why the said decree should not be executed against you, and if no sufficient cause shall be, within the time specified, shown to the satisfaction of the Court, an order for its execution will be forthwith issued in the terms of the said application.

Given under my hand and the seal of the Court, this ¹⁹ day of

Judge.

The Code of Civil Procedure 1908.
(*The First Schedule.—Appendix H.—Miscellaneous.*)

PLAINTIFF.	Name.	No. of suit.	Date of presentation of plaint.
DEFENDANT.	Description.	Place of residence.	Place of residence.
CLAIM.	Name.	Particulars.	Amount or value.
APPEARANCE.	When the cause of action accrued.	Day for parties to appear.	Day for parties to appear.
JUDGMENT.	For whom.	Date.	Date.
APPEAL.	For what, or amount.	Date of decision of appeal.	Judgment in appeal.
EXECUTION.	Date of application.	Date of order.	Against whom.
	For what, and amount of money.	For what.	Amount of costs.
	Amount paid into Court.	Amount paid into Court.	Amount of costs.
	Arrested.	Arrested.	Minute of other Return than Payment or Arrest, and date of every Return.
RETURN OF EXECUTION.			

NOTE.—Where there are numerous plaintiffs or numerous defendants, the name of the first plaintiff only, or the first defendant only, as the case may be, need be entered in the register.

The Code of Civil Procedure 1908.

(The First Schedule.—Appendix H.—Miscellaneous.)

APPELLANT.	No. of appeal.	
	Name.	
DESCRIPTION.	Place of residence.	
	Description.	
RESPONDENT.	Name.	
	Place of residence.	
DECREE APPEALED FROM.	Of what Court.	
	No. of Orls. in Trial Suit.	
APPEAL.	Particulars.	
	Day for parties to appear.	
DECREE APPEALED FROM.	Amount of Value.	
	Amount of	
APPEARANCE.	Appellant.	
	Respondent.	
JUDGEMENT.	Date.	
	Conferred, reversed or varied.	
APPEAL.	For what or amount.	

No. 15

REGISTER OF APPRAISALS. (O. 41, r. 9.)

COURT (OR HIGH COURT) AT

REGISTER OF APPEALS FROM DECREES in the year 19

The Code of Civil Procedure, 1908.
(*The Second Schedule.—Arbitration.*)

The Second Schedule.

ARBITRATION.

Arbitration in Suits.

1. (1) Where in any suit all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced, apply to the Court for an order of reference.

(2) Every such application shall be in writing and shall state the matter sought to be referred.

Appointment of arbitrator.

2. The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

3. (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this schedule, deal with such matter in the same suit.

4. (1) Where reference is to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators—

(a) by the appointment of an umpire; or

(b) by declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail; or

(c) by empowering the arbitrators to appoint an umpire; or

(d) otherwise as may be agreed between the parties or, if they cannot agree, as the Court may determine.

(2) Where an umpire is appointed, the Court shall fix such time as it thinks reasonable for the making of his award in case he is required to act.

Power of Court to appoint arbitrator in certain cases.

5. (1) In any of the following cases, namely :—

(a) where the parties cannot agree within a reasonable time with respect to the appointment of an arbitrator, or the person appointed refuses to accept the office of arbitrator, or

(b) where an arbitrator or umpire—

(i) dies, or

(ii) refuses or neglects to act or becomes incapable of acting, or

(iii) leaves British India in circumstances showing that he will probably not return at an early date, or

(c) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so,

any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire.

(a) If, within seven clear days after such notice has been served or such further time as the Court may in each case allow, no arbitrator or no umpire is appointed, as the case may be, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire or make an order superseding the arbitration, and in such case shall proceed with the suit.

Powers of arbitrator or umpire appointed under paragraph 4 or 5.

6. Every arbitrator or umpire appointed under paragraph 4 or paragraph 5 shall have the like powers as if his name had been inserted in the order of reference.

7. (1) The Court shall issue the same processes to the parties and witness whom the arbitrator or umpire desires to examine, as the Court may issue in suits tried before it.

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

8. Where the arbitrators or the umpire cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either allow further time, and from time to time, either before or after the expiration of the period fixed for the making of the award, enlarge such period; or may make an order superseding the arbitration, and in such case shall proceed with the suit.

Where umpire may arbitrate in lieu of arbitrators.

9. Where an umpire has been appointed, he may enter on the reference in the place of the arbitrators,—

(a) if they have allowed the appointed time to expire without making an award, or

(b) if they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.

10. Where an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

11. Upon any reference by an order of the Court, the arbitrator or umpire may, with the leave of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of

The Code of Civil Procedure, 1908.
(The Second Schedule.—Arbitration.)

the Court, and the Court shall deliver its opinion thereon, and shall order such opinion to be added to and to form part of the award.

Power to modify or correct award.

22. The Court may, by order, modify or correct an award,—

- (a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or
- (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or
- (c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

23. The Court may also make such order as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

Order as to costs of arbitration.

24. The Court may remit the award or any matter referred to arbitration to the re-consideration of the same arbitrator or umpire, upon such terms as it thinks fit,—

- (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred;
- (b) where the award is so indefinite as to be incapable of execution;
- (c) where an objection to the legality of the award is apparent upon the face of it.

25. (1) An award remitted under paragraph 24 becomes void on failure of the arbitrator or umpire to re-consider it. But no award shall be set aside except on one of the following grounds, namely:—

- (a) corruption or misconduct of the arbitrator or umpire;
- (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of willfully misleading or deceiving the arbitrator or umpire;
- (c) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the Court, or being otherwise invalid.

(2) Where an award becomes void or is set aside under clause (1), the Court shall make an order superseding the arbitration and in such case shall proceed with the suit.

26. (1) Where the Court sees no cause to remit the award or any of the matters referred to arbitration

for re-consideration in manner aforesaid, and no application has been made to set aside the award, or the Court has refused such application, the Court shall, after the time for making such application has expired, proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

Order of reference on agreements to refer.

27. (1) Where any persons agree in writing that any difference between them shall be referred to arbitration, the parties to the agreement, or any of them, may apply to any Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement, other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement or, if there is no such provision and the parties cannot agree, the Court may appoint an arbitrator.

28. Where any party to any agreement to refer to arbitration, or any person claiming under him, in Stay of suit where there is an agreement to refer to arbitration.

stipulates any suit against any other party to the agreement, or any person claiming under him, in respect of any matter agreed to be referred, any party to such suit may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to the Court to stay the suit; and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement to refer to arbitration, and that the applicant was, at the time when the suit was instituted and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the suit.

29. The foregoing provisions, so far as they are consistent with any agreement filed under paragraph 27, shall be applicable to all proceedings under the order of reference made by the Court under that paragraph, and to the award and to the decree following thereon.

Arbitration without the intervention of a Court.

30. (1) Where any matter has been referred to arbitration without the intervention of a Court, and an award has been made thereon, any person interested in the award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court.

Filing award in matter referred to arbitration without intervention of Court.

*The Code of Civil Procedure, 1908.**(The Second Schedule.—Arbitration.)*

(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

(3) The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

21. (1) Where the Court is satisfied that the matter has been referred to arbitration and that an award has been made thereon and where no ground such as is mentioned or referred to in paragraph 14 or paragraph 15

is proved, the Court shall order the award to be filed and shall proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

22. The last thirty-seven words of section 21 of the Specific Relief Act, 1877, shall not apply to any 1 of 1877.
Exclusion of certain words in the Specific Relief agreement to refer to arbitration, or to any award, to which the provisions of this schedule apply.

23. The forms set forth in the Appendix, with such variations as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

APPENDIX.

No. 1.

APPLICATION FOR AN ORDER OF REFERENCE.

(Title of suit.)

1. This suit is instituted for (state nature of claim).
2. The matter in difference between the parties is (state matter of difference).
3. The applicants being all the parties interested have agreed that the matter in difference between them shall be referred to arbitration.
4. The applicants therefore apply for an order of reference.

A. B.

C. D.

Dated the day of 19 .

NOTE.—If the parties are agreed as to the arbitrators it should be so stated.

No. 2.

ORDER OF REFERENCE.

(Title of suit.)

Upon reading the application presented on the day of 19 it is ordered that the following matter in difference arising in this suit, namely :—

be referred for determination to X and Y, or in case of their not agreeing then to the determination of Z, who is hereby appointed to be umpire; and such arbitrators are to make their award in writing on or before the day of 19, and in case of the said arbitrators not agreeing in an award the said umpire is to make his award in writing within months after the time during which it is within the power of the arbitrators to make an award shall have ceased.

• Liberty to apply.

Given under my hand and the seal of the Court, this day of 19 .

Judge.

No. 3.

ORDER FOR APPOINTMENT OF NEW ARBITRATOR.

(Title of suit.)

Whereas by an order, dated the day of 19 [state order of reference and death, refusal, etc., of arbitrator], it is by consent ordered that Z be appointed in the place of X

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The Code of Civil Procedure, 1908.
(The Second Schedule.—Arbitration.)

deceased, or as the case may be) to act as arbitrator with Y, the surviving arbitrator, under the said order; and it is ordered that the award of the said arbitrators be made on or before the day of 19 Given under my hand and the seal of the Court, this day of 19

Judge.

No. 4.

SPECIAL CASE.

(Title of suit.)

In the matter of an arbitration between A. B. of and C. D. of the following special case is stated for the opinion of the Court :—

[Here state the facts concisely in numbered paragraphs.]

The questions of law for the opinion of the Court are :—

First, whether _____

Secondly, whether _____

X.

Y.

Dated the day of 19

No. 5.

AWARD.

(Title of suit.)

In the matter of an arbitration between A. B. of and C. D. of

WHEREAS in pursuance of an order of reference made by the Court of and dated the day of 19 the following matter in difference between A. B. and C. D., namely, _____

has been referred to us for determination;

Now we, having duly considered the matter referred to us, do hereby make our award as follows :—

We award—

- (1) that _____
- (2) that _____

Dated the day of 19

X.

Y.

The Code of Civil Procedure, 1908.

(The Third Schedule.—Execution of Decrees by Collectors.)

The Third Schedule.**EXECUTION OF DECREES BY COLLECTORS.****Powers of Collector.**

2. Where the execution of a decree has been transferred to the Collector under section 68, he may—

- (a) proceed as the Court would proceed when the sale of immoveable property is postponed in order to enable the judgment-debtor to raise the amount of the decree ; or
- (b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold ; or
- (c) sell the property ordered to be sold or so much thereof as may be necessary.

3. Where the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for the payment of money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

3. (1) In any such case as is referred to in paragraph 2, the Collector shall publish a notice, allowing Notice to be given to decree-holders and to persons a period of sixty days from the date of its publication for having claims on property.

- (a) every person holding a decree for the payment of money against the judgment-debtor capable of execution by sale of his immoveable property and which such decree-holder desires to have so executed, and every holder of a decree for the payment of money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder ;
- (b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.

(2) Such notice shall be published by being affixed on a conspicuous part of the court-house of the Court which made the original order for sale, and in such other places (if any) as the Collector thinks fit ; and where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

4. (1) Upon the expiration of the said period, the Collector shall appoint a day for hearing any

Amount of decrees for payment of money to be ascertained, and immoveable property available for representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such inquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and inquiry.

(2) Where there is no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

(3) Where any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order for sale, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof is within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector, who shall then draw up a statement as above provided in accordance with such decision.

5. The Collector may, instead of himself issuing the notices and holding the inquiry required by Where District Court may issue notices and hold inquiry.

Collector or appear in the records of his office, and forward such statement to the District Court ; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by paragraphs 3 and 4 and transmit such statement to the Collector.

6. The decision by the Court of any dispute arising under paragraph 4 or paragraph 5 shall, as between the parties thereto, have the force of and be appealable as a decree.

7. (1) Where the amount to be recovered and the property available have been determined as provided Scheme for liquidation of decrees for payment of money.

(a) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property ; or,

(b) if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale, raise such amount and interest (notwithstanding the original order for sale) —

(i) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property ; or

(ii) by mortgaging the whole or any part of such property ; or

(iii) by selling part of such property ; or

(iv) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale ; or

(v) partly by one of such modes, and partly by another or others of such modes.

(2) For the purpose of managing the whole or any part of such property, the Collector may exercise all the powers of its owner.

*The Code of Civil Procedure, 1908.**(The Third Schedule.—Execution of Decrees by Collectors.)*

(3) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this clause, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

(4) In proceeding under this paragraph the Collector shall be subject to such rules consistent with this Act as may, from time to time, be made in this behalf by the Local Government.

8. Where, on the expiration of the letting or management under paragraph 7, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks from the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

9. (i) The Collector shall, from time to time, render to the Court which made the original order for sale an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this schedule, and shall hold the balance at the disposal of the Court.

(ii) Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and, if the Collector so directs, the expenses of any witnesses summoned by him.

(iii) The balance shall be applied by the Court—

- (a) in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and,
- (b) where the Collector has proceeded under paragraph 1, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or otherwise as the Court may under section 73 direct; or
- (c) where the Collector has proceeded under paragraph 2,—
 - (i) in keeping down the interest on incumbrances on the property;
 - (ii) where the judgment-debtor has no other sufficient means of subsistence, in providing for his subsistence to such amount as the Court thinks fit; and
 - (iii) in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered.

(4) No other holder of a decree for the payment of money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied, and the residue (if any) shall be paid to the judgment-debtor or such other person as the Court directs.

10. Where the Collector sells any property under this schedule, he shall put it up to public auction in one or more lots, as he thinks fit, and may—

- (a) fix a reasonable reserved price for each lot;
- (b) adjourn the sale for a reasonable time whenever, for reasons to be recorded, he deems the adjournment necessary for the purpose of obtaining a fair price for the property;
- (c) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

11. (i) So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties his representative, and prosecution of remedies by paragraphs 1 to 10, the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for the payment of money.

(ii) During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under paragraph 7.

(iii) The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this paragraph in respect of any remedy of which the decree-holder has been temporarily deprived.

12. Where the property of which the sale has been ordered is situate in more districts than one, the provision where property is in several districts. powers and duties conferred and imposed on the Collector by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct.

13. In exercising the powers conferred on him by paragraphs 1 to 10 the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

The Code of Civil Procedure, 1908.
 (The Fourth Schedule.—Enactments amended.)

The Fourth Schedule.

(See section 155.)

ENACTMENTS AMENDED.

1 Year.	2 No.	3 Short title.	4 Amendment.
1870	VII	The Court-fees Act, 1870	<p>In article 1 of Schedule I, after the word "plaint" the words "written statement pleading a set-off or counter-claim" and after the word "Act" the words "or of cross-objection" shall be inserted.</p> <p>From article 11 of Schedule II the words "from an order rejecting a plaint or" shall be omitted.</p> <p>For the entry in the first column of Schedule II relating to article 19 the following entry shall be substituted, namely:—</p> <p>"Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908."</p>

The Code of Civil Procedure, 1908.
(*The Fifth Schedule.—Enactments repealed.*)

The Fifth Schedule.

(See section 156.)

ENACTMENTS REPEALED.

1	2	3	4
Year.	No.	Subject or short title.	Extent of repeal.

Acts of the Governor General in Council.

1870	VII	The Court-fees Act, 1870 . . .	Section 16, and article 15 of Schedule II.
1882	IV	The Transfer of Property Act 1882	Sections 85 to 90 inclusive, 92 to 94 inclusive, 96, 97, 99 and in section 100 the words " and all the provisions hereinbefore contained as to a mortgagee instituting a suit for the sale of the mortgaged property."
"	XIV	The Code of Civil Procedure . . .	The whole Act.
"	XV	The Presidency Small Cause Courts Act, 1882.	The last paragraph of section 3.
1888	VI	The Debtors Act, 1888 . . .	Sections 2 to 8.
"	VII	The Civil Procedure Code Amendment Act, 1888.	So much as is unrepealed, except section 1, section 65 and section 66, sub-sections (1), (3) and (4).
"	X	The Presidency Small Cause Courts Law Amendment Act, 1888.	So much as is unrepealed.
1890	VIII	The Guardian and Wards Act, 1890.	Section 53.
1891	XII	The Repealing and Amending Act, 1891.	So much as relates to Act XIV of 1882 and Act VII of 1888.
1892	VI	The Indian Limitation Act and Civil Procedure Code Amendment Act, 1892.	In the title and preamble the words " and the Code of Civil Procedure " and sections 2, 3 and 4.
1894	V	The Civil Procedure Code Amendment Act, 1894.	The whole Act.
1895	VII	The Punjab Laws Act Amendment Act, 1895.	Sections 1 and 2.
"	XIII	The Civil Procedure Code Amendment Act, 1895.	The whole Act.
1900	VI	The Lower Burma Courts Act, 1900.	So much of the schedules as relate to Act XIV of 1882.

J. M. MACPHERSON,
Secretary to the Government of India.



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Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Governor General of India in Council received the assent of the Governor General on the 8th June, 1908, and is hereby promulgated for general information :

ACT NO. VI OF 1908.

An Act further to amend the law relating to explosive substances.

WHEREAS it is necessary further to amend the law relating to explosive substances ; It is hereby enacted as follows :

1. (1) This Act may be called the Explosive Substances Act, 1908.

(2) It extends to the whole of British India and applies also to—

(a) all native Indian subjects of His Majesty in any place without and beyond British India ;

(b) all other British subjects within the territories of any native prince or chief in India.

2. In this Act the expression "explosive substance" shall be deemed to include any materials for making any explosive substance ; also any apparatus, machine, implement, or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance ; also any part of any such apparatus, machine, or implement.

3. Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause

Punishment for causing explosion likely to endanger life or property shall, whether any injury to person or property has been actually caused or not, be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added.

Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.

4. Any person who unlawfully and maliciously—

(a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in British India of a nature likely to endanger life or to cause serious injury to property ; or

(b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in British India, or to enable any other person by means thereof to endanger life or cause serious injury to property in British India ;

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with transportation for a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added.